Revised Legislative Proposals and Explanatory Notes on Taxpayer Migration

Published by
The Honourable Paul Martin, P.C., M.P.
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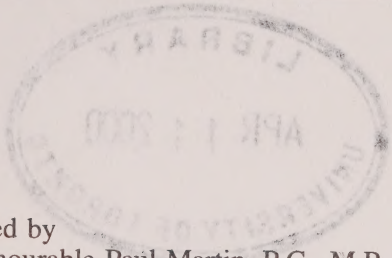

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Department of Finance Canada
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Legislative Proposals

INCOME TAX ACT

1. (1) Section 7 of the *Income Tax Act* is amended by adding the following after subsection (1.5):

Emigrant

(1.6) For the purposes of this section and paragraph 110(1)(*d*.1), a taxpayer is deemed not to have disposed of a share solely because of subsection 128.1(4).

(2) Subsection (1) applies after 1992.

2. (1) Section 10 of the Act is amended by adding the following after subsection (11):

Removing property from inventory

(12) If at a particular time in a taxation year a non-resident taxpayer ceases to use, in connection with a business or part of a business carried on by the taxpayer in Canada immediately before the particular time, a property that was immediately before the particular time described in the inventory of the business or the part of the business, as the case may be, (other than a property that was disposed of by the taxpayer at the particular time), the taxpayer is deemed

(*a*) to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value at the particular time; and

(*b*) to have received those proceeds immediately before the particular time in the course of carrying on the business or the part of the business, as the case may be.

Adding property to inventory

(13) If at any time a property becomes included in the inventory of a business or part of a business that a non-resident taxpayer carries on in Canada after that time (other than a property that was, otherwise than because of this subsection, acquired by the taxpayer at that time), the taxpayer is deemed to have acquired the property at that time at a cost equal to its fair market value at that time.

Work in progress

(14) For the purposes of subsections (12) and (13), property that is included in the inventory of a business includes property that would be so included if paragraph 34(*a*) did not apply.

(2) Subsection (1) applies after December 23, 1998.

3. (1) Paragraphs 28(4)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) for the year, if the taxpayer was non-resident throughout the year, and

(*b*) for the part of the year throughout which the taxpayer was resident in Canada, if the taxpayer was resident in Canada at any time in the year.

(2) Subsection 28(4.1) of the Act is repealed.

(3) Subsection (1) applies to the 1998 and subsequent taxation years.

(4) Subsection (2) applies after December 23, 1998.

4. (1) Section 40 of the Act is amended by adding the following after subsection (3.6):

Losses of non-resident

(3.7) If at any particular time an individual who was, at any time before the particular time, non-resident disposes of a property, for the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) in computing the individual's loss from the disposition,

(*a*) the individual is deemed to be a corporation in respect of dividends received by the individual, or deemed under Part XIII to have been paid to the individual, at a time that is after the time at which the individual last acquired the property and at which the individual was non-resident; and

(*b*) an amount on account of

(i) each taxable dividend received by the individual at a time described in paragraph (*a*), and

(ii) each amount deemed under Part XIII to have been paid to the individual at a time described in paragraph (*a*), as a dividend from a corporation resident in Canada, to the extent that the amount can reasonably be considered to relate to the property,

is deemed to be a taxable dividend that was received by the individual and that was deducted under section 112 in computing the individual's taxable income or taxable income earned in Canada for the taxation year that includes that time.

(2) The portion of subsection 40(9) of the Act before the formula is replaced by the following:

Additions to taxable Canadian property

(9) If a non-resident person disposes of a taxable Canadian property

(*a*) that the person last acquired before April 27, 1995,

(*b*) that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, and

(*c*) that would be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on January 1, 1996,

the person's gain or loss from the disposition is deemed to be the amount determined by the formula

(3) Subsection (1) applies to dispositions after December 23, 1998 by individuals who ceased to be resident in Canada after October 1, 1996.

(4) Subsection (2) applies to dispositions that occur after April 26, 1995.

5. (1) Subsection 45(1) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) in applying this subsection in respect of a non-resident taxpayer, a reference to "gaining or producing income" shall be read as a reference to gaining or producing income from a source in Canada.

(2) Subsection (1) applies after October 1, 1996.

6. (1) Subsection 53(3) of the Act is repealed.

(2) Subsection (1) applies after October 1, 1996.

7. (1) Subparagraph 66(4)(*a*)(i) of the Act is replaced by the following:

(i) the total of the foreign exploration and development expenses incurred by the taxpayer before the end of the year and at a time at which the taxpayer was resident in Canada

(2) The portion of paragraph 66(4)(*b*) of the Act before subparagraph (ii) is replaced by the following:

(*b*) of that total, the greatest of,

(i) such amount as the taxpayer claims not exceeding 10% of the amount determined under paragraph (*a*) in respect of the taxpayer for the year,

(i.1) if the taxpayer ceased to be resident in Canada immediately after the end of the year or the taxpayer is an individual who ceased to be resident in Canada in the year, such amount as the taxpayer claims not exceeding the amount determined under paragraph (*a*) in respect of the taxpayer for the year, and

(3) Subsection (1) applies to the 1999 and subsequent taxation years.

(4) Subsection (2) applies to the 1995 and subsequent taxation years.

8. (1) Subparagraph 66.7(2)(*a*)(i) of the Act is replaced by the following:

(i) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were incurred when the original owner was resident in Canada, were not otherwise deducted in computing the successor's income for the year, were not deducted in computing the successor's income for a preceding taxation year and were not deductible by the original owner, nor deducted by any predecessor owner of the particular property, in computing income for any taxation year

(2) Subsection 66.7(10) of the Act is amended by adding the following after paragraph (*e*):

(*f*) the original owner is deemed to have been resident in Canada before that time when the corporation was resident in Canada,

(3) Subsections (1) and (2) apply to the 1999 and subsequent taxation years.

9. (1) The portion of subsection 87(10) of the Act after paragraph (*f*) is replaced by the following:

the new share is deemed, for the purposes of subsection 116(6), the definitions "qualified investment" in subsections 146(1), 146.1(1), and 146.3(1) and in section 204, and the definition "taxable Canadian property" in subsection 248(1), to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

(2) Subsection (1) applies after October 1, 1996.

10. (1) Paragraph 111(9)(*a*) replaced by the following:

(*a*) in the part of the year throughout which the taxpayer was non-resident, if section 114 applies to the taxpayer in respect of the year, and

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

11. (1) Sections 114 and 114.1 of the Act are replaced by the following:

Individual resident in Canada for only part of year

114. Notwithstanding subsection 2(2), the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

(*a*) the amount that would be the individual's income for the year if the individual had no income or losses, for the part of the year throughout which the individual was non-resident, other than

(i) income or losses described in paragraphs 115(1)(*a*) to (*c*), and

(ii) income that would have been included in the individual's taxable income earned in Canada for the year under subparagraph 115(1)(*a*)(v) if the part of the year throughout which the individual was non-resident were the whole taxation year

exceeds the total of

(*b*) the deductions permitted by subsection 111(1) and, to the extent that they relate to amounts included in computing the amount determined under paragraph (*a*), the deductions permitted by any of paragraphs 110(1)(*d*), (*d*.1), (*d*.2) and (*f*), and

(*c*) any other deduction permitted for the purpose of computing taxable income to the extent that

(i) it can reasonably be considered to be applicable to the part of the year throughout which the individual was resident in Canada, or

(ii) if all or substantially all of the individual's income for the part of the year throughout which the individual was non-resident is included in the amount determined under paragraph (*a*), it can reasonably be considered to be applicable to that part of the year.

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

12. (1) Subparagraph 115(1)(*a*)(i) of the Act is replaced by the following:

(i) incomes from the duties of offices and employments performed by the non-resident person in Canada and, if the person was resident in Canada at the time the person performed the duties, outside Canada,

(2) Paragraphs 115(1)(*b*) and (*b*.1) of the Act are replaced by the following:

(*b*) the only taxable capital gains and allowable capital losses referred to in paragraph 3(*b*) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties (other than treaty-protected properties), and

(3) Paragraphs 115(2)(*b*) and (*b*.1) of the Act are replaced by the following:

(*b*) a student attending, or a teacher teaching at, an educational institution outside Canada that is a university, college or other educational institution providing courses at a post-secondary school level, who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to attend or to teach at the institution,

(*b*.1) an individual who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to carry on research or any similar work under a grant received by the individual to enable the individual to carry on the research or work,

(4) Subsections (1) and (3) apply to the 1998 and subsequent taxation years except that if an individual who ceased at any time after 1992 and before October 2, 1996 to be resident in Canada elects under clause 22 in respect of that cessation of residence, subparagraph 115(1)(*a*)(i) of the Act, as enacted by subsection (1), applies to income received by the individual after that cessation of residence.

(5) Subsection (2) applies after October 1, 1996, except that, in its application to dispositions that occurred before the 1998 taxation year, paragraph 115(1)(*b*) of the Act, as enacted by subsection (2), shall be read as follows:

(*b*) the only taxable capital gains and allowable capital losses referred to in paragraph 3(*b*) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties, and

13. (1) The portion of subsection 116(1) of the Act before paragraph (*a*) is replaced by the following:

Disposition by non-resident person of certain property

116. (1) If a non-resident person proposes to dispose of any taxable Canadian property (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

(2) The portion of subsection 116(5.1) of the Act before paragraph (*a*) is replaced by the following:

Gifts, etc.

(5.1) If a non-resident person has disposed of or proposes to dispose of a life insurance policy in Canada, a Canadian resource property or a taxable Canadian property other than

(3) The portion of subsection 116(5.2) of the Act before paragraph (*a*) is replaced by the following:

Certificates for dispositions

(5.2) If a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is a taxable Canadian property or any interest in or option in respect of a property to which this subsection applies (whether or not that property exists),

(4) Paragraph 116(6)(*a*) of the Act is replaced by the following:

(*a*) a property that is a taxable Canadian property solely because a provision of this Act deems it to be a taxable Canadian property;

(*a*.1) a property (other than real property situated in Canada, a Canadian resource property or a timber resource property) that is described in an inventory of a business carried on in Canada by the person;

(5) Subsections (1) to (4) apply after October 1, 1996.

14. (1) Section 119 of the Act is replaced by the following:

Former resident – credit for tax paid

119. If at any particular time an individual was deemed by subsection 128.1(4) to have disposed of a capital property that was a taxable Canadian property of the individual throughout the period that began at the particular time and that ends at the first time, after the particular time, at which the individual disposes of the property, there may be deducted in computing the individual's tax payable under this Part for the taxation year that includes the particular time the lesser of

(*a*) that proportion of the individual's tax for the year otherwise payable under this Part (within the meaning assigned by paragraph (*a*) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7)) that

(i) the individual's taxable capital gain from the disposition of the property at the particular time

is of

(ii) the amount determined under paragraph 114(*a*) in respect of the individual for the year, and

(*b*) that proportion of the individual's tax payable under Part XIII in respect of dividends received during the period by the individual in respect of the property and amounts deemed under Part XIII to have been paid during the period to the individual as dividends from corporations resident in Canada, to the extent that the amounts can reasonably be considered to relate to the property, that

(i) the amount by which the individual's loss from the disposition of the property at the end of the period is reduced by subsection 40(3.7)

is of

(ii) the total amount of those dividends.

(2) Subsection (1) applies to dispositions after December 23, 1998 by individuals who ceased to be resident in Canada after October 1, 1996.

15. (1) Subsection 120(2.1) of the Act is repealed.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

16. (1) Subsection 120(3) of the Act is replaced by the following:

Definition of "individual's income for the year"

(3) In subsections (1) and (2), an "individual's income for the year" means

(*a*) if section 114 applies to the individual in respect of the year, the amount determined under paragraph 114(*a*) in respect of the individual for the year; and

(*b*) if the individual was non-resident throughout the year, the individual's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(*d*) to (*f*).

(2) Paragraph (b) of the definition "tax otherwise payable under this Part" in subsection 120(4) of the Act is replaced by the following:

(*b*) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if this Part were read without reference to any of sections 119, 126, 127 and 127.4.

(3) Subsection (1) applies to the 1998 and subsequent taxation years.

(4) Subsection (2) applies to the 1996 and subsequent taxation years.

17. (1) Subsection 120.2(4) of the Act is replaced by the following:

Where subsection (1) does not apply

(4) Subsection (1) does not apply in respect of an individual's return of income filed under subsection 70(2), paragraph 104(2)(*d*) or 128(2)(*f*) or subsection 150(4).

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

18. (1) Paragraph 122.3(1)(*e*) of the Act is replaced by the following:

(*e*) the amount, if any, by which

(i) if the individual is resident in Canada throughout the year, the individual's income for the year, and

(ii) if the individual is non-resident at any time in the year, the amount determined under paragraph 114(*a*) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*) or deductible under paragraph 110(1)(*d*.2), (*d*.3), (*f*) or (*j*) in computing the individual's taxable income for the year.

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

19. (1) Clause 126(1)(*b*)(ii)(A) of the Act is replaced by the following:

(A) the amount, if any, by which,

(I) if the taxpayer was resident in Canada throughout the year, the taxpayer's income for the year, and

(II) if the taxpayer was non-resident at any time in the year, the amount determined under paragraph 114(*a*) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under paragraph 110(1)(*d*), (*d*.1), (*d*.2), (*d*.3), (*f*) or (*j*) or section 112 or 113, in computing the taxpayer's taxable income for the year, and

(2) Clause 126(2.1)(*a*)(ii)(A) of the Act is replaced by the following:

(A) the amount, if any, by which

(I) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year, and

(II) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(*a*) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under paragraph 110(1)(*d*), (*d*.1), (*d*.2), (*d*.3), (*f*) or (*j*) or section 112 or 113, in computing the taxpayer's taxable income for the year, and

(3) The portion of subsection 126(2.2) of the Act before paragraph (*b*) is replaced by the following:

Non-resident's foreign tax deduction

(2.2) If at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of a property that was deemed by subsection 48(2), as it read in its application before 1993, or by paragraph 128.1(4)(*e*), as it read in its application before October 2, 1996, to be taxable Canadian property of the taxpayer, the taxpayer may

deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to the lesser of

(*a*) the amount of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada that can reasonably be regarded as having been paid by the taxpayer in respect of any gain or profit from the disposition of the property, and

(4) Subparagraph 126(2.2)(*b*)(ii) of the Act is replaced by the following:

(ii) if the taxpayer is non-resident throughout the year, the taxpayer's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(*d*) to (*f*), and

(iii) if the taxpayer is resident in Canada at any time in the year, the amount that would have been the taxpayer's taxable income earned in Canada for the year if the part of the year throughout which the taxpayer was non-resident were the whole taxation year.

(5) Section 126 of the Act is amended by adding the following after subsection (2.2):

Former resident – deduction

(2.21) If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired because of the application, at any time (in this subsection referred to as the "acquisition time") after October 1, 1996, of paragraph 128.1(4)(*c*), there may be deducted from the individual's tax otherwise payable under this Part for the year (in this subsection referred to as the "emigration year") that includes the time immediately before the acquisition time an amount not exceeding the lesser of

(*a*) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, if the particular time is before 2007, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, if the particular time is before 2007,

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued while the individual was resident in Canada and before the time the individual last ceased to be resident in Canada, and

(*b*) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the individual for the emigration year

exceeds

(ii) the amount of such tax that would have been payable if the particular property had not been deemed by subsection 128.1(4) to have been disposed of in the emigration year.

Former resident – trust beneficiary

(2.22) If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired at any time (in this subsection referred to as the "acquisition time") on a distribution after October 1, 1996 to which paragraphs 107(2)(*a*) to (*c*) do not apply only because of subsection 107(5), the trust may deduct from its tax otherwise payable under this Part for the year (in this subsection referred to as the "distribution year") that includes the acquisition time an amount not exceeding the lesser of

(*a*) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is

resident at the particular time, if the particular time is before 2007, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, if the particular time is before 2007,

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued before the distribution and after the latest of the times, before the distribution, at which

(iii) the trust became resident in Canada,

(iv) the individual became a beneficiary under the trust, or

(v) the trust acquired the property, and

(*b*) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the trust for the distribution year

exceeds

(ii) the amount of such tax that would have been payable by the trust for the distribution year if the particular property had not been distributed to the individual.

Where foreign credit available

(2.23) For the purposes of subsections (2.21) and (2.22), in computing, in respect of the disposition of a property by an individual in a taxation year, the total amount of taxes paid by the individual for the year to one or more governments of countries other than Canada, there shall be deducted any tax credit (or other reduction in the amount of a tax) to which the individual was entitled for the year, under the law of any of those countries or under a tax treaty between Canada and any of those countries, because of taxes paid or payable by the individual under this Act in respect of the disposition or a previous disposition of the property.

(6) Subparagraphs 126(3)(*a*)(i) and (ii) of the Act are replaced by the following:

(i) for the year, if the individual is resident in Canada throughout the year, and

(ii) for the part of the year throughout which the individual was resident in Canada, if the individual is non-resident at any time in the year,

(7) Paragraph 126(3)(*b*) of the Act is replaced by the following:

(*b*) the amount, if any, by which

(i) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year, and

(ii) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(*a*) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under paragraph 110(1)(*d*), (*d*.1), (*d*.2), (*d*.3), (*f*) or (*j*), in computing the taxpayer's taxable income for the year, and

(8) Subsections (1), (2), (4), (6) and (7) apply to the 1998 and subsequent taxation years.

(9) Subsections (3) and (5) apply to the 1996 and subsequent taxation years.

20. (1) Paragraph 127.55(*b*) of the Act is repealed.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

21. (1) Subparagraph 128.1(1)(*b*)(i) of the Act is replaced by the following:

(i) property that is a taxable Canadian property,

(2) Paragraph 128.1(1)(*b*) of the Act is amended by adding the word "and" at the end of subparagraph (iii) and by replacing subparagraphs (iv) and (v) by the following:

(iv) excluded personal property of the taxpayer (other than an interest of the individual in a non-resident testamentary trust that was never acquired for consideration),

(3) Paragraph 128.1(4)(*b*) of the Act is replaced by the following:

Fiscal period

(*a*.1) if the taxpayer is an individual (other than a trust) and carries on a business at the particular time, otherwise than through a permanent establishment (as defined by regulation) in Canada,

(i) the fiscal period of the business is deemed to have ended immediately before the particular time and a new fiscal period of the business is deemed to have begun at the particular time, and

(ii) for the purpose of determining the fiscal period of the business after the particular time, the taxpayer is deemed not to have established a fiscal period of the business before the particular time;

Deemed disposition

(*b*) the taxpayer is deemed to have disposed, at the time (in this paragraph and paragraph (*d*) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer other than, if the taxpayer is an individual,

(i) real property situated in Canada, a Canadian resource property or a timber resource property,

(ii) capital property used in, eligible capital property in respect of or property described in the inventory of, a business carried on by the taxpayer through a permanent establishment (as defined by regulation) in Canada at the particular time,

(iii) excluded personal property of the taxpayer,

(iv) if the taxpayer is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property that was owned by the taxpayer at the time the taxpayer last became resident in Canada or acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada, and

(v) any property in respect of which the taxpayer elects under paragraph (6)(*a*) for the taxation year that includes the first time, after the particular time, at which the taxpayer becomes resident in Canada,

for proceeds equal to its fair market value at the time of disposition, which proceeds are deemed to have become receivable and to have been received by the taxpayer at the time of disposition;

(4) Subsection 128.1(4) of the Act is amended by replacing paragraphs (*d*) to (*f*) with the following:

Individual – elective disposition

(*d*) notwithstanding paragraphs (*b*) to (*c*), if the taxpayer is an individual (other than a trust) and so elects in prescribed form and manner in respect of a property described in subparagraph (*b*)(i) or (ii),

(i) the taxpayer is deemed to have disposed of the property at the time of disposition for proceeds equal to its fair market value at that time and to have reacquired the property at the particular time at a cost equal to those proceeds,

(ii) the taxpayer's income for the taxation year that includes the particular time is deemed to be the greater of

(A) that income determined without reference to this subparagraph, and

(B) the lesser of

(I) that income determined without reference to this subsection, and

(II) that income determined without reference to subparagraph (i), and

(iii) each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time is deemed to be the lesser of

(A) that amount determined without reference to this subparagraph, and

(B) the greater of

(I) that amount determined without reference to this subsection, and

(II) that amount determined without reference to subparagraph (i); and

Employee CCPC stock option shares

(*d*.1) if the taxpayer is deemed by paragraph (*b*) to have disposed of a share which was acquired under circumstances to which subsection 7(1.1) applied, there shall be deducted from the taxpayer's proceeds of disposition the amount that would, if section 7 were read without reference to subsection 7(1.6), be added under paragraph 53(1)(*j*) in computing the adjusted cost base to the taxpayer of the share as a consequence of the deemed disposition.

(5) Subsection 128.1 of the Act is amended by adding the following after subsection (4):

Instalment interest

(5) If an individual is deemed by subsection (4) to have disposed of a property at any time in a taxation year, in applying sections 155 and 156 and subsections 156.1(1) to (3) and 161(2), (4) and (4.01) and any regulations made for the purposes of those provisions, the individual's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(*a*) the individual's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(*b*) the amount that would be determined under paragraph (*a*) if subsection (4) did not apply to the individual for the year.

Returning former resident

(6) If an individual (other than a trust) becomes resident in Canada at a particular time in a taxation year and the last time (in this subsection referred to as the "emigration time"), before the particular time, at which the individual ceased to be resident in Canada was after October 1, 1996,

(*a*) subject to paragraph (*b*), if the individual so elects in writing filed with the Minister on or before the individual's filing-due date for the year, paragraphs (4)(*b*) and (*c*) do not apply to the individual's cessation of residence at the emigration time in respect of all properties that were taxable Canadian properties of the individual

throughout the period that began at the emigration time and that ends at the particular time;

(*b*) where, if a property in respect of which an election under paragraph (*a*) is made had been acquired by the individual at the emigration time at a cost equal to its fair market value at the emigration time and had been disposed of by the individual immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, the application of subsection 40(3.7) would reduce the amount that would, but for subsection 40(3.7) and this subsection, be the individual's loss from the disposition,

(i) the individual is deemed to have disposed of the property at the time of disposition (within the meaning assigned by paragraph (4)(*b*)) in respect of the emigration time for proceeds of disposition equal to the total of

(A) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(B) the amount, if any, by which that reduction exceeds the lesser of

(I) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(II) the amount, if any, which the individual specifies for the purposes of this paragraph in the election under paragraph (*a*) in respect of the property,

(ii) the individual is deemed to have reacquired the property at the emigration time at a cost equal to the amount, if any, by which the amount determined under clause (i)(A) exceeds the lesser of that reduction and the amount specified by the individual under subclause (i)(B)(II), and

(iii) for the purposes of section 119, the individual is deemed to have disposed of the property immediately before the particular time;

(*c*) if the individual so elects in writing filed with the Minister on or before the individual's filing-due date for the year, in respect of each property that the individual owned throughout the period that began at the emigration time and that ends at the particular time and that is deemed by paragraph (1)(*b*) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs (1)(*c*) and (4)(*b*) the individual's proceeds of disposition

at the time of disposition (within the meaning assigned by paragraph (4)(*b*)), and the individual's cost of acquiring the property at the particular time are deemed to be those proceeds and that cost, determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the individual's gain from the disposition of the property deemed by paragraph (4)(*b*) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual specifies in respect of the property in the election; and

(*d*) notwithstanding subsections 152(4) to (5), such assessment of tax payable under the Act by the individual for any taxation year that is before the year that includes the particular time and that is not before the year that includes the emigration time shall be made as is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by a taxpayer in respect of any period that is before the day on which the taxpayer's return of income for the taxation year that includes the particular time is filed, or

(ii) any penalty payable under this Act.

Post-emigration loss

(7) If an individual (other than a trust)

(*a*) was deemed by paragraph (4)(*b*) to have disposed of a capital property at any particular time after October 1, 1996,

(*b*) has disposed of the property at a later time at which the property was a taxable Canadian property of the individual, and

(*c*) so elects in writing in the individual's return of income for the taxation year that includes the later time,

there shall, except for the purposes of paragraph (4)(*c*), be deducted from the individual's proceeds of disposition of the property at the particular time, and added to the individual's proceeds of disposition of the property at the later time, an amount equal to the least of

(*d*) the amount specified in respect of the property in the election,

(*e*) the amount that would, but for the election, be the individual's gain from the disposition of the property at the particular time, and

(*f*) the amount that would be the individual's loss from the disposition of the property at the later time, if the loss were determined having reference to every other provision of this Act including, for greater certainty, subsection 40(3.7) and section 112, but without reference to the election.

Information reporting

(8) An individual who ceases at a particular time in a taxation year to be resident in Canada, and who owns immediately after the particular time one or more reportable properties the total fair market value of which at the particular time is greater than $25,000, shall file with the Minister in prescribed form, on or before the individual's filing-due date for the year, a list of all the reportable properties that the individual owned immediately after the particular time.

Definitions

(9) The definitions in this subsection apply in this section.

"excluded personal property"
« bien meuble exclu »

"excluded personal property" of a taxpayer that is an individual means

(*a*) a right of the individual under, or an interest of the individual in a trust governed by,

(i) a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",

(ii) a registered retirement income fund,

(iii) a registered education savings plan,

(iv) a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan",

(v) an employees profit sharing plan,

(vi) an employee benefit plan (other than an employee benefit plan described in subparagraph (*b*)(i) or (ii)),

(vii) a plan or arrangement (other than an employee benefit plan) under which the individual has a right to receive in a year remuneration in respect of services rendered by the individual in the year or a prior year,

(viii) a superannuation or pension fund or plan (other than an employee benefit plan),

(ix) a retirement compensation arrangement,

(x) a foreign retirement arrangement, or

(xi) a registered supplementary unemployment benefit plan;

(*b*) a right of the individual to a benefit under an employee benefit plan that is

(i) a plan or arrangement described in paragraph (*j*) of the definition "salary deferral arrangement" in subsection 248(1) that would, but for paragraphs (*j*) and (*k*) of that definition, be a salary deferral arrangement, or

(ii) a plan or arrangement that would, but for paragraph 6801(*c*) of the *Income Tax Regulations*, be a salary deferral arrangement,

to the extent that the benefit can reasonably be considered to be attributable to services rendered by the individual in Canada;

(*c*) a right of the individual under an agreement referred to in subsection 7(1) or (1.1);

(*d*) a right of the individual to a retiring allowance,

(*e*) a right of the individual under, or an interest of the individual in, a trust that is

(i) an employee trust,

(ii) an amateur athlete trust,

(iii) a cemetery care trust, or

(iv) a trust governed by an eligible funeral arrangement;

(*f*) a right of the individual to receive a payment under

(i) an annuity contract, or

(ii) an income-averaging annuity contract;

(*g*) a right of the individual to a benefit under

(i) the *Canada Pension Plan* or a provincial plan described in section 3 of that Act,

(ii) the *Old Age Security Act*,

(iii) a provincial pension plan prescribed for the purpose of paragraph 60(*v*), or

(iv) a plan or arrangement instituted by the social security legislation of a country other than Canada or of a state, province or other political subdivision of such a country;

(*h*) a right of the individual to a benefit described in any of subparagraphs 56(1)(*a*)(iii) to (vi);

(*i*) a right of the individual to a payment out of a NISA Fund No. 2;

(*j*) an interest of the individual in a personal trust resident in Canada if the interest was never acquired for consideration and did not arise as a consequence of a qualifying disposition by the individual (within the meaning that would be assigned by subsection 107.4(1) if that subsection were read without reference to paragraphs 107.4(1)(*h*) and (*i*));

(*k*) an interest of the individual in a non-resident testamentary trust if the interest was never acquired for consideration; or

(*l*) an interest of the individual in a life insurance policy in Canada, other than a policy described in subsection 138.1(1).

"reportable property"
« bien à déclarer »

"reportable property" of an individual at a particular time means any property other than

(*a*) money that is legal tender in Canada and deposits of such money;

(*b*) property that would be excluded personal property of the individual if the definition "excluded personal property" in this

subsection were read without reference to paragraphs (*c*), (*j*) and (*l*);

(*c*) if the individual is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property described in subparagraph (4)(*b*)(iv) that is not taxable Canadian property; and

(*d*) any item of personal-use property the fair market value of which, at the particular time, is less than $10,000.

(6) Subsections (1) to (5) (other than paragraph 128.1(4)(*d*.1) of the Act, as enacted by subsection (4), and subsection 128.1(8) of the Act and the definition "reportable property" in subsection 128.1(9) of the Act, as enacted by subsection (5)) apply to changes in residence that occur after October 1, 1996, and

(*a*) an election made under any of paragraphs 128.1(6)(*a*) or (*c*), or 128.1(7)(*c*) of the Act, as enacted by subsection (5), by an individual who ceased to be resident in Canada before the particular day on which this Act is assented to, is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the particular day; and

(*b*) a form described in subsection 128.1(8) of the Act, as enacted by subsection (5), filed by an individual who ceased to be resident in Canada before the particular day on which this Act is assented to, is deemed to have been filed in a timely manner if it is filed on or before the individual's filing-due date for the taxation year that includes the particular day.

(7) Paragraph 128.1(4)(*d*.1) of the Act, as enacted by subsection (4), applies to changes in residence that occur after 1992.

(8) Subsection 128.1(8) of the Act and the definition "reportable property" in subsection 128.1(9) of the Act, as enacted by subsection (5), apply to changes in residence that occur after 1995.

22. (1) If an individual ceased at any time after 1992 and before October 2, 1996 to be resident in Canada and so elects in writing filed with the Minister of National Revenue before the end of the sixth month following the month in which this Act is assented to, subparagraph 128.1(4)(*b*)(iii) of the Act as it read at that time shall, in respect of the cessation of residence, be read as enacted by this Act and as though subsection 128.1(9) of the Act as enacted by this Act applied.

(2) Where an individual makes an election under subsection (1), notwithstanding subsections 152(4) to (5) of the Act, such reassessment of the individual's tax, interest or penalties for any year shall be made as is necessary to take the election into account.

23. (1) The Act is amended by adding the following after section 128.2:

Former resident – replaced shares

128.3. If, in a transaction to which section 51, subparagraphs 85.1(1)(*a*)(i) and (ii) or section 86 or 87 applies, a person acquires a share (in this section referred to as the "new share") in exchange for another share (in this section referred to as the "old share"), for the purposes of section 119, subsections 126(2.21), (2.22) and (2.23), 128.1(6) and (7), 180.1(1.4) and 220(4.5) and (4.6), the person is deemed not to have disposed of the old share, and the new share is deemed to be the same share as the old share.

(2) Subsection (1) applies after October 1, 1996.

24. (1) Paragraph 131(8.1)(*a*) of the Act is replaced by the following:

(*a*) throughout the period that begins on the later of February 21, 1990 and the day of its incorporation and ends at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (*b*) of that definition; or

(2) Subsection (1) applies after October 1, 1996.

25. (1) Paragraph 133(1)(*c*) of the Act is replaced by the following:

(*c*) the only taxable capital gains and allowable capital losses referred to in paragraph 3(*b*) were from dispositions of taxable Canadian property,

(2) Paragraph (*a*) of the definition "Canadian property" in subsection 133(8) of the Act is replaced by the following:

(*a*) taxable Canadian property, and

(3) The description of M in paragraph (*c*) of the definition "capital gains dividend account" in subsection 133(8) of the Act is replaced by the following:

M is the total of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property, and

(4) Subsections (1) to (3) apply after October 1, 1996.

26. (1) The portion of subsection 141(5) of the Act before paragraph (*a*) is replaced by the following:

Exclusion from taxable Canadian property

(5) For the purpose of paragraph (*d*) of the definition "taxable Canadian property" in subsection 248(1), a share of the capital stock of a corporation is deemed to be listed at any time on a stock exchange prescribed for the purpose of that definition where

(2) Subsection (1) applies after December 15, 1998.

27. (1) Paragraph 152(6)(*c*.1) of the Act is replaced by the following:

(*c*.1) a deduction under section 119 in respect of a disposition in a subsequent taxation year,

(2) Subsection 152(6) of the Act is amended by adding the following paragraphs after paragraph (*f*):

(*f*.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(*f*.2) a deduction under subsection 128.1(7) as a result of a disposition in a subsequent taxation year,

(3) Subsections (1) and (2) apply to taxation years that end after October 1, 1996.

(4) In respect of

(*a*) a deduction under section 119 of the Act, or an adjustment under subsection 128.1(7) of the Act, in respect of a disposition by a taxpayer, or

(*b*) a deduction under subsection 126(2.21) or (2.22) of the Act in respect of foreign taxes paid by a taxpayer,

the taxpayer is deemed to have filed a prescribed form described in subsection 152(6) of the Act in a timely manner if the taxpayer files the form with the Minister on or before the later of the day on or

before which the taxpayer would, but for this subsection, be required to file the form and the taxpayer's filing-due date for the taxation year that includes the day on which this Act is assented to.

28. (1) Subsections 159(4) and (4.1) of the Act are repealed.

(2) Subsection (1) applies to individuals who cease to be resident in Canada after October 1, 1996.

29. (1) Paragraph 161(7)(*a*) of the Act is amended by adding the following before subparagraph (ii):

(i) any amount deducted under section 119 in respect of a disposition in a subsequent taxation year,

(2) Subparagraph 161(7)(*a*)(iv.1) of the Act is replaced by the following:

(iv.1) any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(3) Paragraph 161(7)(*a*) of the Act is amended by striking out the word "and" at the end of subparagraph (ix), adding the word "and" at the end of subparagraph (x) and by adding the following after subparagraph (x):

(xi) any amount deducted under paragraph 128.1(6)(*c*) or subsection 128.1(7) from the taxpayer's proceeds of disposition of a property because of an election made in a return of income for a subsequent taxation year,

(4) Subsections (1) to (3) apply to taxation years that end after October 1, 1996.

30. (1) Subsection 164(5) of the Act is amended by adding the following after paragraph (*a*):

(*a*.1) any amount deducted under section 119 in respect of the disposition of a taxable Canadian property in a subsequent taxation year,

(2) Paragraph 164(5)(*e*) of the Act is replaced by the following:

(*e*) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by

subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(3) Subsection 164(5) of the Act is amended by adding the following after paragraph (*h*.01):

(*h*.02) the deduction under paragraph 128.1(6)(*c*) or subsection 128.1(7) of an amount from the taxpayer's proceeds of disposition of a property, because of an election made in a return of income for a subsequent taxation year,

(4) Subsection 164(5.1) of the Act is replaced by the following:

Interest – disputed amounts

(5.1) Where a portion of a repayment made under subsection (1.1) or (4.1), or an amount applied under subsection (2) in respect of a repayment, can reasonably be regarded as being in respect of a claim made by the taxpayer in an objection to or appeal from an assessment of tax for a taxation year for a deduction or exclusion described in subsection (5) in respect of a subsequent taxation year, interest shall not be paid or applied on the portion for any part of a period that is before the latest of the dates described in paragraphs (5)(*i*) to (*l*).

(5) Subsections (1) to (4) apply to taxation years that end after October 1, 1996.

31. (1) Section 180.1 of the Act is amended by adding the following after subsection (1.3):

Former resident – credit for tax paid

(1.4) There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year (computed without reference to subsections (1.1) and (1.2)) the amount, if any, by which

(*a*) the amount that would be deductible under section 119 in computing the individual's tax payable under Part I for the year if, in applying for that purpose paragraph (*a*) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7), the reference in that paragraph to "tax payable under this Part for the year" were read as a reference to "the total of taxes payable under this Part and Part I.1 for the year but for subsections 180.1(1.1), (1.2) and (1.4)"

exceeds

(*b*) the amount deductible under section 119 in computing the individual's tax payable under Part I for the year.

(2) Subsection 180.1(2) of the Act is replaced by the following:

Meaning of tax payable under Part I

(2) For the purposes of subsection (1), the tax payable under Part I by an individual for a taxation year is the amount, if any, by which

(*a*) the amount that would be the individual's tax payable under that Part for the year if that Part were read without reference to section 119, subsection 120(1) and sections 122.3, 126, 127, 127.4 and 127.54

exceeds

(*b*) if the individual was throughout the year a mutual fund trust, the least of the amounts determined under paragraphs (*a*), (*b*) and (*c*) of the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the trust for the year, and

(*c*) in any other case, nil.

(3) Subsections (1) and (2) apply after October 1, 1996.

32. (1) Subsection 219(1.1) of the Act is replaced by the following:

Excluded gains

(1.1) For the purposes of subsection (1), the definition "taxable Canadian property" in subsection 248(1) shall be read without reference to paragraphs (*a*) and (*c*) to (*k*) of that definition and as if the only interests or options referred to in paragraph (*l*) of that definition were those in respect of property described in paragraph (*b*) of that definition.

(2) Subsection (1) applies after October 1, 1996.

33. (1) The Act is amended by adding the following after subsection 220(4.4):

Security for departure tax

(4.5) If an individual who is deemed by subsection 128.1(4) to have disposed of a property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) at any

particular time in a taxation year (in this section referred to as the individual's "emigration year") elects, in prescribed manner on or before the individual's balance-due day for the emigration year, that this subsection and subsections (4.51) to (4.54) apply in respect of the emigration year,

(*a*) the Minister shall, until the individual's balance-due day for a particular taxation year that begins after the particular time, accept adequate security furnished by or on behalf of the individual on or before the individual's balance-due day for the emigration year for the lesser of

(i) the total amount of taxes under Parts I and I.1

(A) that would be payable by the individual for the emigration year if the exclusion or deduction of each amount referred to in paragraph 161(7)(*a*) were not taken into account, but

(B) that would not have been so payable if each property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) deemed by subsection 128.1(4) to have been disposed of at the particular time, and that has not been subsequently disposed of before the beginning of the particular year, were not deemed by subsection 128.1(4) to have been disposed of by the individual at the particular time, and

(ii) if the particular year does not immediately follow the emigration year, the amount determined under this paragraph in respect of the individual for the taxation year that immediately precedes the particular year; and

(*b*) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period that ends on the individual's balance-due day for the particular year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to an individual's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the individual on account of the particular amount.

Deemed security

(4.51) If an individual (other than a trust) elects under subsection (4.5) that that subsection apply in respect of a taxation year, for the purposes of subsections (4.5) to (4.54) the Minister is deemed to have accepted at any time after the election is made adequate security for a total amount of taxes payable under Parts I and I.1 by the individual for the emigration year equal to the lesser of

(*a*) the total amount of those taxes that would be payable for the year by an *inter vivos* trust resident in Canada (other than a trust described in subsection 122(2)) the taxable income for which for the year were $75,000, and

(*b*) the greatest amount for which the Minister is required to accept security furnished by or on behalf of the individual under subsection (4.5) at that time in respect of the emigration year,

and that security is deemed to have been furnished by the individual before the individual's balance-due day for the emigration year.

Limit

(4.52) Notwithstanding subsections (4.5) and (4.51), the Minister is deemed at any time not to have accepted security under subsection (4.5) in respect of an individual's emigration year for any amount greater than the amount, if any, by which

(*a*) the total amount of taxes that would be payable by the individual under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(*a*), in respect of which the day determined under paragraph 161(7)(*b*) is after that time, were not taken into account

exceeds

(*b*) the total amount of taxes that would be determined under paragraph (*a*) if this Act were read without reference to subsection 128.1(4).

Inadequate security

(4.53) Subject to subsection (4.7), if it is determined at any particular time that security accepted by the Minister under subsection (4.5) is not adequate to secure the particular amount for which it was furnished by or on behalf of an individual,

(*a*) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(*b*) the Minister shall notify the individual in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the individual within 90 days after the day of notification; and

(*c*) any security accepted in accordance with paragraph (*b*) is deemed to have been accepted by the Minister under subsection (4.5) on account of the particular amount at the particular time.

Extension of time

(4.54) If in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(*a*) the time for making an election under subsection (4.5);

(*b*) the time for furnishing and accepting security under this subsection 4.5; or

(*c*) the 90-day period for the acceptance of security under paragraph (4.53)(*b*).

Security for tax on distributions of taxable Canadian property to non-resident beneficiaries

(4.6) Where

(*a*) solely because of the application of subsection 107(5), paragraphs 107(2)(*a*) to (*c*) do not apply to a distribution by a trust in a particular taxation year (in this section referred to as the trust's "distribution year") of taxable Canadian property, and

(*b*) the trust elects, in prescribed manner on or before the trust's balance-due day for the distribution year, that this subsection and subsections (4.61) to (4.63) apply in respect of the distribution year,

the following rules apply:

(*c*) the Minister shall, until the trust's balance-due day for a subsequent taxation year, accept adequate security furnished by or on

behalf of the trust on or before the trust's balance-due day for the distribution year for the lesser of

(i) the total amount of taxes under Parts I and I.1

(A) that would be payable by the trust for the distribution year if the exclusion or deduction of each amount referred to in paragraph 161(7)(*a*) were not taken into account, but

(B) that would not have been so payable if the rules in subsection 107(2) (other than the election referred to in that subsection) had applied to each distribution by the trust in the distribution year of property (other than property subsequently disposed of before the beginning of the subsequent year) to which paragraph (*a*) applies, and

(ii) where the subsequent year does not immediately follow the distribution year, the amount determined under this paragraph in respect of the trust for the taxation year that immediately precedes the subsequent year, and

(*d*) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period ending on the trust's balance-due day for the subsequent year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to the trust's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the trust on account of the particular amount.

Limit

(4.61) Notwithstanding subsection (4.6), the Minister is deemed at any time not to have accepted security under that subsection in respect of a trust's distribution year for any amount greater than the amount, if any, by which

(*a*) the total amount of taxes that would be payable by the trust under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(*a*), in respect of which the day determined under paragraph 161(7)(*b*) is after that time, were not taken into account

exceeds

(*b*) the total amount of taxes that would be determined under paragraph (*a*) if paragraphs 107(2)(*a*) to (*c*) had applied to each distribution by the trust in the year of property to which paragraph (1)(*a*) applies.

Inadequate security

(4.62) Subject to subsection (4.7), where it is determined at any particular time that security accepted by the Minister under subsection (4.6) is not adequate to secure the particular amount for which it was furnished by or on behalf of a trust,

(*a*) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(*b*) the Minister shall notify the trust in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the trust within 90 days after the notification; and

(*c*) any security accepted in accordance with paragraph (*b*) is deemed to have been accepted by the Minister under subsection (4.6) on account of the particular amount at the particular time.

Extension of time

(4.63) Where in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(*a*) the time for making an election under subsection (4.6);

(*b*) the time for furnishing and accepting security under subsection (4.6); or

(*c*) the 90-day period for the acceptance of the security under paragraph (4.62)(*b*).

Undue Hardship

(4.7) If, in respect of any period of time, the Minister determines that an individual who has made an election under either of subsection (4.5) or (4.6)

(*a*) cannot, without undue hardship, pay or reasonably arrange to have paid on the individual's behalf, an amount of taxes to which security under that subsection would relate, and

(*b*) cannot, without undue hardship, provide or reasonably arrange to have provided on the individual's behalf, adequate security under that subsection,

the Minister may, in respect of the election, accept for the period security different from, or of lesser value than, that which the Minister would otherwise accept under that subsection.

Limit

(4.71) In making a determination under subsection (4.7), the Minister shall ignore any transaction that is a disposition, lease, encumbrance, mortgage, or other voluntary restriction by a person or partnership of the person's or partnership's rights in respect of a property, if the transaction can reasonably be considered to have been entered into for the purpose of influencing the determination.

(2) Subsection (1) applies to dispositions and distributions that occur at any time after October 1, 1996 except that, if an individual ceased to be resident in Canada, or a distribution by a trust occurred to which paragraph 220(4.6)(*a*) of the Act, as enacted by subsection (1), applies in respect of the trust, before the particular day on which this Act is assented to,

(*a*) an election by the individual under subsection 220(4.5) of the Act, or by the trust under subsection 220(4.6) of the Act, as the case may be, as enacted by subsection (1), in respect of the taxation year that includes that time is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the particular day; and

(*b*) security furnished by or on behalf of the individual under subsection 220(4.5) of the Act, or by or on behalf of the trust under subsection 220(4.6) of the Act, as the case may be, as enacted by subsection (1), is deemed to have been furnished in a timely manner if it is furnished on or before the individual's filing-due date for the taxation year that includes the particular day.

34. (1) The definition "taxable Canadian property" in subsection 248(1) of the Act is replaced by the following:

"taxable Canadian property"
« bien canadien imposable »

"taxable Canadian property" of a taxpayer at any time in a taxation year means a property of the taxpayer that is

(*a*) real property situated in Canada,

(*b*) property used or held by the taxpayer in, eligible capital property in respect of, or property described in an inventory of, a business carried on in Canada, other than

(i) property used in carrying on an insurance business, and

(ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the taxpayer is resident does not impose tax on gains of persons resident in Canada from dispositions of such property,

(*c*) if the taxpayer is an insurer, its designated insurance property for the year,

(*d*) a share of the capital stock of a corporation resident in Canada (other than a non-resident-owned investment corporation if, on the first day of the year, the corporation owns neither taxable Canadian property nor property referred to in any of subparagraphs (*m*)(i) to (iii), or a mutual fund corporation) that is not listed on a prescribed stock exchange,

(*e*) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the corporation each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not the property exists,

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the share was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

(B) Canadian resource properties, and

(C) timber resource properties,

(*f*) a share that is listed on a prescribed stock exchange and that would be described in paragraph (*d*) or (*e*) if those paragraphs were read without reference to the words "that is not listed on a prescribed stock exchange", or a share of the capital stock of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer, persons with whom the taxpayer did not deal at arm's length, or the taxpayer together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(*g*) an interest in a partnership if, at any particular time during the 60-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(i) a taxable Canadian property,

(ii) a Canadian resource property,

(iii) a timber resource property,

(iv) an income interest in a trust resident in Canada, or

(v) an interest in or option in respect of a property described in any of subparagraphs (ii) to (iv), whether or not that property exists was greater than 50% of the fair market value of all of its properties,

(*h*) a capital interest in a trust (other than a unit trust) resident in Canada,

(*i*) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(*j*) a unit of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the issued units of the trust belonged to the taxpayer, to persons with whom the taxpayer did not deal at arm's length, or to the taxpayer and persons with whom the taxpayer did not deal at arm's length,

(*k*) an interest in a non-resident trust if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the trust each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not that property exists

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the interest was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

(B) Canadian resource properties, and

(C) timber resource properties, or

(*l*) an interest in or option in respect of a property described in any of paragraphs (*a*) to (*k*) , whether or not that property exists,

and

(*m*) for the purposes of section 2, subsection 107(2.001) and sections 128.1 and 150, and for the purpose of applying paragraphs 85(1)(*i*) and 97(2)(*c*) to a disposition by a non-resident person, includes

(i) a Canadian resource property,

(ii) a timber resource property,

(iii) an income interest in a trust resident in Canada,

(iv) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(*a*), and

(v) a life insurance policy in Canada;

(2) Subsection (1) applies after October 1, 1996 except that, in its application before December 24, 1998, the portion of paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1) of the Act before subparagraph (i) of that paragraph, as enacted by subsection (1), shall be read as follows:

(*b*) capital property used by the taxpayer in carrying on a business in Canada, other than

INCOME TAX APPLICATION RULES

35. (1) Subsection 26(30) of the *Income Tax Application Rules* is replaced by the following:

Additions to taxable Canadian property

(30) Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a property

(*a*) that the person last acquired before April 27, 1995;

(*b*) that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995; and

(*c*) that would be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on January 1, 1996.

(2) Subsection (1) applies to dispositions that occur after October 1, 1996.

Explanatory Notes

PREFACE

These explanatory notes describe, for discussion purposes, proposed amendments to the *Income Tax Act* and the *Income Tax Application Rules*. The proposed amendments are described, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Paul Martin
Minister of Finance

These explanatory notes are provided to assist in an understanding of proposed amendments to the *Income Tax Act* and the *Income Tax Application Rules*. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Clause 1

Emigrant's Stock Options

ITA
7(1.6)

Section 7 of the *Income Tax Act* deals with employee stock options. The section sets out rules for determining the amount to be included in an employee's income in respect of the exercise or sale of rights under an employment-related stock option arrangement.

Subsection 7(1.1) provides that the employment benefit in respect of shares of a Canadian-controlled private corporation issued under an employee stock option plan is, under certain conditions, to be included in the employee's income only in the taxation year in which the employee disposes of or exchanges the shares.

New subsection 7(1.6) applies where an individual who holds shares emigrates from Canada and is treated as having disposed of the shares under subsection 128.1(4) of the Act. In those circumstances, subsection 7(1.6) deems the shares, for the purposes of section 7 and paragraph 110(1)(*d*.1) of the Act, not to have been disposed of because of the emigration. As a result, emigration from Canada will not by itself trigger an income inclusion under section 7. However, because the share will still be treated as having been disposed of for the purposes of the Act, the emigrant individual will realize any gain that has accrued on the share since it was acquired. See the commentary on new paragraph 128.1(4)(*d*.1) for additional information.

New subsection 7(1.6) applies after 1992.

Clause 2

Valuation of Inventory

ITA
10

Section 10 of the Act sets out rules for the valuation of inventory for the purpose of computing a taxpayer's income or loss from a business. These amendments ensure the appropriate measurement of a non-resident's income or loss from a business carried on in Canada.

Removing Property from Inventory

ITA
10(12)

New subsection 10(12) of the Act applies to a non-resident taxpayer who ceases to use a property, described in the inventory of a business or part of a business that is carried on by the taxpayer in Canada, otherwise than by a disposition of the property. For example, subsection 10(12) applies if a non-resident taxpayer removes a property from the inventory of a business or part of a business carried on in Canada and adds that property to the inventory of a business or part of a business carried on by the taxpayer in another country. The time at which the taxpayer ceases to use the property in connection with a business or part of a business in Canada is referred to in subsection 10(12) and in this note as the "particular time".

Where new subsection 10(12) applies, the taxpayer is treated as having disposed of the property immediately before the particular time, for proceeds equal to the property's fair market value at that time. The taxpayer is treated as having received the proceeds in the course of carrying on the business in which the property was formerly used, in the taxation year that includes the particular time.

New subsection 10(12) applies after December 23, 1998.

Adding Property to Inventory

ITA
10(13)

New subsection 10(13) of the Act applies to a non-resident taxpayer who adds a property (otherwise than by acquiring the property) to the inventory of a business or part of a business that is carried on in Canada by the taxpayer. For example, new subsection 10(13) applies if a taxpayer removes a property from the inventory of a business or part of a business carried on in another country and adds that property to the inventory of a business or part of a business carried on in Canada by the taxpayer. The time at which the taxpayer adds the property to the inventory of the business or part of a business in Canada is referred to in subsection 10(13) and in this note as the "particular time".

Where new subsection 10(13) applies, the taxpayer is deemed to have acquired the property at the particular time at a cost equal to the property's fair market value at that time.

New subsection 10(13) applies after December 23, 1998.

Work in Progress

ITA
10(14)

Section 34 of the Act provides an exception to full accrual accounting in calculating the income of a business that is a professional practice by allowing the income to be determined without taking into account any professional work in progress at year end.

New subsection 10(14) provides, for the purposes of new subsections 10(12) and 10(13), that a property included in the inventory of a business includes professional work in progress that would be so included if paragraph 34(*a*) (the basic rule described above) did not apply. Any work in progress that would ordinarily be described in an inventory will thus be subject to the deemed disposition under subsection 10(12) or the deemed acquisition under subsection 10(13).

New subsection 10(14) applies after December 23, 1998.

Clause 3

Farming or Fishing Business – Non-resident

ITA
28(4) and (4.1)

Section 28 of the Act provides rules concerning the computation of income for taxpayers who, for income tax purposes, use the cash-basis method of accounting in respect of farming or fishing businesses. Subsection 28(4) applies, under certain conditions, to require the inclusion of the value of a non-resident taxpayer's accounts receivable in calculating the taxpayer's income for the year. Subsection 28(4.1) applies, under certain circumstances, to treat a non-resident taxpayer as having disposed of inventory owned by the taxpayer for proceeds of disposition equal to its fair market value.

Subsection 28(4) is amended, for the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment makes no substantive change, but keeps the reference in step with the changes to section 114. For more information about the changes to section 114, see the commentary on that section.

With the addition of new subsection 10(11) of the Act and the amendment of section 128.1 of the Act (changes in residence), subsection 28(4.1) has become redundant, and is repealed with application after December 23, 1998.

Clause 4

Capital Losses – General Rules

ITA
40

Section 40 of the Act provides rules for determining a taxpayer's gain or loss from the disposition of a property.

Losses of Non-resident

ITA
40(3.7)

New subsection 40(3.7) of the Act is a "stop-loss" rule that may reduce the loss of an individual from the disposition of a property at a particular time, where the individual was non-resident at any time before the particular time. In general terms, this stop-loss rule applies where an individual has received dividends in respect of a property (whether a share, an interest in a partnership or an interest in a trust) during the period of non-residence that begins after the individual last acquired the property.

The Act already includes, in section 112 and related provisions, a comprehensive stop-loss system for corporations. Instead of duplicating that system, new subsection 40(3.7) adapts it to apply to losses otherwise realized by individuals who are or have been non-residents.

For the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) of the Act, new subsection 40(3.7) deems an individual to be a corporation in respect of dividends received in respect of a property after the last time the individual acquired the property and while the individual was non-resident, and deems any taxable dividends received by the individual during that period to have been deductible under section 112 when received. The effect of this is that some or all dividends received while non-resident may reduce the individual's loss on a share, partnership interest or trust interest.

New subsection 40(3.7) applies to dispositions of property that occur after December 23, 1998 by individuals who cease to be resident after October 1, 1996.

Additions to Taxable Canadian Property

ITA
40(9)

As a result of changes to the definition of "taxable Canadian property," certain properties acquired before April 27, 1995 became

taxable Canadian properties on that date. Subsection 40(9) was enacted to provide rules for computing a non-resident person's gain or loss from the disposition of such a property, prorating the amount of gain or loss determined without reference to the subsection according to the number of months the person held the property before May 1995.

Effective October 2, 1996 the definition of "taxable Canadian property" is again amended so that certain properties acquired before that date will have become taxable Canadian properties on that date. Subsection 40(9) is amended to clarify that the formula it sets out applies only to gains or losses realized on the disposition of properties that became taxable Canadian properties on April 27, 1995.

Amended subsection 40(9) applies to dispositions that occur after April 26, 1995.

Clause 5

Change in Use

ITA
45(1)(*d*)

Subsection 45(1) of the Act provides for a deemed disposition and reacquisition of property where its use is altered, wholly or in part, from a personal to an income-earning or income-producing use, or vice versa. This "change in use" rule applies for the purpose of the subdivision of the Act that deals with taxable capital gains and allowable capital losses.

New paragraph 45(1)(*d*) provides that, in applying subsection 45(1) in respect of a non-resident taxpayer, any reference to "gaining or producing income" is to be read as a reference to gaining or producing income from a source in Canada. As a result, a non-resident who ceases to use a property to earn income in Canada and begins to use it instead to earn income outside Canada will be treated as having disposed of the property.

New paragraph 45(1)(*d*) applies after October 1, 1996.

Clause 6

Adjustments to Cost Base

ITA
53(3)

Section 53 of the Act sets out rules for determining the adjusted cost base of a capital property for the purpose of calculating any capital gain or loss on its disposition.

Subsection 53(3) provides that, for the purposes of certain deductions required to be made in determining the adjusted cost base of interests in non-resident trusts, property of a trust is taxable Canadian property (TCP) at a particular time if the property would be TCP if the trust had disposed of the property at that time.

Subsection 53(3) is repealed with effect after October 1, 1996. This amendment is strictly consequential to changes in the definition of TCP (described in the commentary on subsection 248(1) of the Act) and does not represent any change in tax policy.

Clause 7

Exploration and Development Expenses

ITA
66

Section 66 of the Act provides rules with respect to Canadian and foreign exploration and development expenses.

Foreign Exploration and Development Expenses

ITA
66(4)

Subsection 66(4) of the Act sets out the deduction that may be claimed for foreign exploration and development expenses (FEDE) incurred by a taxpayer resident in Canada. A taxpayer's minimum deduction for a taxation year under this subsection is 10% of the

taxpayer's undeducted FEDE balance at the end of the year. An additional portion of a taxpayer's undeducted FEDE balance may be deducted by a taxpayer for a taxation year, essentially to the extent of the taxpayer's foreign resource income in excess of that minimum amount.

ITA
66(4)(*a*)(i)

Subparagraph 66(4)(*a*)(i) of the Act is amended so that a taxpayer's FEDE balance takes into account only expenses incurred while the taxpayer was resident in Canada. As a result, a taxpayer who becomes resident in Canada cannot deduct FEDE that was incurred before becoming resident in Canada. This amendment applies to the 1999 and subsequent taxation years.

The amendment to subparagraph 66(4)(*a*)(i) does not prevent the creation of FEDE as a consequence of a taxpayer becoming resident Canada. In these circumstances, there is a deemed acquisition of the taxpayer's foreign resource properties at fair market value pursuant to paragraph 128.1(1)(*c*) of the Act. The deemed cost of the foreign resource properties qualifies as FEDE under paragraph (*c*) of the FEDE definition in subsection 66(15) of the Act.

ITA
66(4)(*b*)(i.1)

New subparagraph 66(4)(*b*)(i.1) of the Act is introduced to allow the full amount of a taxpayer's undeducted FEDE balance to be deducted in the event that the taxpayer ceases to be resident in Canada. This measure is consistent with existing income tax rules which allow emigrating taxpayers to claim a terminal loss on depreciable property as a consequence of deemed dispositions under paragraph 128.1(4)(*b*) of the Act. The amendment, which applies to the 1995 and subsequent taxation years, will allow the FEDE deduction to be claimed for the last taxation year during which a taxpayer is resident in Canada. (Under paragraph 128.1(4)(*a*) of the Act, a new taxation year for a corporate taxpayer starts at the time that the taxpayer ceases to be resident in Canada.)

Clause 8

Exploration and Development Expenses – Successor Rules

ITA
66.7

Section 66.7 of the Act includes what are commonly known as the "successor rules" with respect to resource properties and expenditures.

ITA
66.7(2)(*a*)(i)

Subsection 66.7(2) allows a corporation to claim deductions with respect to foreign exploration and development expenses (FEDE) incurred by one or more original owners, where property has been acquired in circumstances to which the successor rules apply.

Subparagraph 66.7(2)(*a*)(i) is amended so that the successor FEDE that may be deducted by a successor corporation in respect of an original owner's FEDE is limited to FEDE incurred while the original owner was resident in Canada. This change is parallel to the amendment, described above, to subparagraph 66(4)(*a*)(i).

This amendment applies to the 1999 and subsequent taxation years.

ITA
66.7(10)(*f*)

Under subsection 66.7(10) of the Act, a corporation is treated as a successor for the purposes of the successor rules in section 66.7 after an acquisition of control of the corporation. Under paragraph 66.7(10)(*e*), resource expenses incurred by the corporation prior to the change of control are deemed to have been incurred by an original owner of resource properties owned at the time of the acquisition of control.

New paragraph 66.7(10)(*f*) ensures that the deemed original owner had the same status with regard to residence in Canada before the acquisition of control of a corporation as the corporation itself. This

amendment is consequential to an amendment, described above, to subparagraph 66.7(2)(*a*)(i) affecting successor FEDE claims.

This amendment applies to the 1999 and subsequent taxation years.

Clause 9

Amalgamation

ITA
87

Section 87 of the Act sets out rules that apply where there has been an amalgamation of two or more taxable Canadian corporations to form a new corporation.

Share Deemed Listed

ITA
87(10)

Subsection 87(10) of the Act treats certain shares issued as part of an "amalgamation squeeze-out" as being listed on a prescribed stock exchange. The subsection is amended, with application after October 1, 1996, to replace its reference to subsection 115(1) of the Act with a reference to the new definition "taxable Canadian property" in subsection 248(1) of the Act. This consequential change is not intended to have any substantive effect on the operation of subsection 87(10).

Clause 10

Losses – Non-resident

ITA
111(9)

Section 111 of the Act establishes the extent to which a taxpayer is permitted to deduct amounts in computing taxable income for a taxation year in respect of losses of other years. Subsection 111(9)

sets out special limits that apply to carryovers from taxation years during which a taxpayer is not resident in Canada.

Subsection 111(9) is amended, for the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment replaces a reference to the portion of the year referred to in paragraph 114(*b*) with a reference to the part of the year throughout which the taxpayer was non-resident. This keeps the reference in step with the changes to section 114. For additional information, see the commentary on section 114.

Clause 11

Part-year Residents

ITA
114, 114.1

Section 114 of the Act provides rules for computing the taxable income of an individual (often referred to as a "part-year resident") who is resident in Canada for some period or periods in a taxation year, and is non-resident for the rest of the year.

In its current form, section 114 in effect applies a two-stage computation. First, it adds the individual's income for the resident part of the year and the individual's taxable income earned in Canada (a term defined in subsection 115(1) of the Act) for the non-resident part of the year, in each case as though the part were the whole year. Second, it allows those deductions (or parts of deductions) in computing taxable income that can reasonably be considered to apply to the resident part of the year.[1]

This division of the year into separate parts can produce unclear and perhaps inconsistent effects. For example, assume that an individual who emigrates from Canada on June 30 holds shares of a Canadian company that are not listed on a prescribed exchange, with an adjusted cost base of $100 and a fair market value of $160 on emigration. Under proposed amendments to section 128.1 of the Act,

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[1] Deductions are not provided for the non-resident part of the year because they are already taken into account in computing taxable income earned in Canada.

the individual is treated as having disposed of the shares and realized the $60 accrued gain before ceasing to be resident in Canada, and as having reacquired the shares, as a non-resident, at a cost of $160. Assume further that the individual actually disposes of the shares on September 30 of the same year, for $140.

On these facts, the individual has a gain of $60 in the resident part of the year, and a loss of $20 in the non-resident part. The result is an overall gain of $40, assuming that the post-departure loss can offset the pre-departure gain. However, the separate calculation under section 114 of the resident-period income and the non-resident period taxable income earned in Canada makes it uncertain that the two can be offset in this way.

Section 114 is amended to avoid such uncertainties, as well as to simplify the application of the rule. The starting-point for calculating a part-year resident's taxable income under amended section 114 is, in paragraph 114(*a*), the individual's income for the year, counting only those amounts of income and losses for the non-resident period that are included in computing taxable income earned in Canada under paragraphs 115(1)(*a*) to (*c*) of the Act.

Paragraphs 114(*b*) and (*c*) set out the deductions that the part-year resident may take in computing taxable income. Paragraph 114(*b*) allows the deduction of loss carryovers permitted by subsection 111(1) of the Act. It also allows the deductions permitted by paragraphs 110(1)(*d*), (*d*.1) and (*d*.2) (the non-taxable 1/4 of employee stock option and prospector's and grubstaker's share benefits) and paragraph 110(1)(*f*) (various social benefits, amounts exempt from Canadian tax under a tax treaty, and income from employment with certain international organizations), to the extent these relate to amounts that have been included in computing the paragraph 114(*a*) amount. Paragraph 114(*c*) allows any other deduction that the Act permits in computing taxable income. A deduction under paragraph 114(*c*) is allowed to the extent the deduction either can reasonably be considered to be applicable to the resident period or, if all or substantially all of the individual's income for the non-resident period is included in the paragraph 114(*a*) amount, can reasonably be considered to apply to the non-resident period.

In the example described above, amended section 114 will include both the resident-period gain and the non-resident-period loss in computing the single paragraph 114(*a*) income amount. The part-year resident will thus be treated as having realized a gain of $40 for the year as a whole.

Amended section 114 applies to the 1998 and subsequent taxation years. A number of consequential amendments ensure that these changes are reflected in other provisions of the Act that refer to section 114.

Section 114.1 of the Act is a technical rule that applies a special reading of paragraphs 115(2)(*b*), (*b*.1) and (*c*) of the Act, for the purpose of applying section 114, to ensure that certain time references in those paragraphs accommodate cases to which section 114 applies. With the restructuring of section 114, this rule is no longer needed. Section 114.1 is repealed for the 1998 and subsequent taxation years.

Clause 12

Non-resident's Taxable Income in Canada

ITA
115

Section 115 of the Act determines the amount of a non-resident person's income that is subject to tax under Part I of the Act. This amount is referred to as the non-resident's "taxable income earned in Canada".

Taxable Income Earned in Canada by Non–residents

ITA
115(1)

Subsection 115(1) of the Act provides the general rules to be applied in calculating a non-resident's "taxable income earned in Canada". Paragraphs 115(1)(*a*) to (*c*) describe the conditions that apply in computing a non-resident's taxable income earned in Canada, while paragraphs 115(1)(*d*) to (*f*) describe the deductions that are available for the purpose of that computation.

Paragraphs 115(1)(*a*) to (*c*) set out special assumptions that are applied in computing the taxable income earned in Canada of a non-resident taxpayer. The general effect of these paragraphs, in conjunction with the deduction provided for treaty-protected income because of the reference to paragraph 110(1)(*f*) in paragraph 115(1)(*d*), is to include in this computation only income and losses from sources in Canada, and of those only amounts that are not treaty-protected.

Subparagraph 115(1)(*a*)(i) includes in this computation income from the duties of offices and employments that the non-resident person in Canada performs in Canada. Subparagraph 115(1)(*a*)(i) is amended to include as well income from offices and employments performed by the non-resident person outside of Canada, if the person was resident in Canada at the time the duties were performed. This ensures that if an individual who is a former resident of Canada receives, as a non-resident, income relating to work the individual performed outside Canada at a time when the individual was resident in Canada, the income is subject to Canadian tax.

This amendment generally applies to the 1998 and subsequent taxation years. In addition, if an individual ceased to be resident in Canada after 1992 and before October 2, 1996, and the individual makes the election described in clause 22, this amendment applies to income received by the individual after that cessation of residence. The clause 22 election in effect backdates the explicit exclusion of certain income rights and trust interests from the deemed disposition immediately before emigration. The basis for excluding the rights in question from the deemed disposition is that they generally represent entitlements to future income that will itself be subject to Canadian tax when it is received by a non-resident. Linking the application of amended subparagraph 115(1)(*a*)(i) to the election ensures that the Act does tax that income, where it relates to employment exercised abroad by a resident of Canada.

Paragraph 115(1)(*b*) lists the types of property (called "taxable Canadian property" or TCP) in respect of which taxable gains and allowable capital losses are considered in the calculation of a non-resident's taxable income earned in Canada. As a result of the relocation of the general TCP definition to subsection 248(1) of the Act, paragraph 115(1)(*b*) can be greatly simplified. In its new form, the paragraph simply refers to taxable capital gains and allowable

capital losses on TCP that is not "treaty-protected property" (as defined in subsection 248(1) of the Act).

Paragraph 115(1)(*b*.1) excludes from the computation of a non-resident's taxable income earned in Canada any taxable capital gain or allowable capital loss from the disposition of a taxable Canadian property that was treaty-protected property of the non-resident. Since this exclusion now forms part of amended paragraph 115(1)(*b*), paragraph 115(1)(*b*.1) can be repealed.

Amended paragraph 115(1)(*b*) generally applies after October 1, 1996. Since the definition (and the concept) of "treaty-protected property" was introduced only with the 1998 Budget, and applies for the 1998 and later taxation years, a transitional version of amended paragraph 115(1)(*b*) omits the reference to treaty-protected property for dispositions that occur before the 1998 taxation year.

Persons Deemed Employed in Canada

ITA
115(2)

Subsection 115(2) applies, in certain special circumstances, to tax remuneration and specified other amounts received by a non-resident. Because of paragraphs 115(2)(*b*) and (*b*.1), subsection 115(2) applies to post-secondary students at Canadian institutions and former Canadian residents who have moved abroad to carry out research or similar work under a grant. The paragraphs are amended, with application to the 1998 and subsequent taxation years, to update their language to reflect current drafting styles. The amendments make no substantive change to the paragraphs.

Clause 13

Disposition by Non-resident Person of Certain Property

ITA
116

Section 116 of the Act establishes procedures for collecting tax from non-residents on the disposition of taxable Canadian property, Canadian resource properties, and certain other properties.

ITA
116(1), (5.1) and (5.2)

Where a non-resident plans to dispose of property the proceeds from the disposition of which are subject to Canadian tax, the non-resident can obtain a "clearance certificate" from the Minister of National Revenue. The certificate, which is provided as well to the prospective purchaser, verifies that the non-resident vendor has made arrangements for the payment of any resulting tax. Without such a certificate, the purchaser may be required to remit a portion of the purchase price to the Receiver General.

Subsections 116(1), (5.1) and (5.2) set out some of the rules and procedures for this process. These subsections are amended, with application after October 1, 1996, to reflect the amended definition "taxable Canadian property" in subsection 248(1) of the Act. In particular, that amended definition clarifies that a property's status as taxable Canadian property does not depend on its being disposed of; this allows the references in these subsections to be simplified.

Definition of "Excluded Property"

ITA
116(6)

The various rules in section 116 of the Act, which provides a withholding procedure for purchasers of certain properties, do not apply where the property is excluded property. "Excluded property" is defined in subsection 116(6).

Paragraph 116(6)(*a*) provides that any property referred to in subparagraph 115(1)(*b*)(xii) of the Act (property that is deemed by a provision of the Act to be taxable Canadian property) is excluded property. Due to the amended definition "taxable Canadian property" in subsection 248(1) of the Act, paragraph 116(6)(*a*) is amended, effective after October 1, 1996, to remove the reference to subparagraph 115(1)(*b*)(xii), and to provide that a property is excluded property if it is a taxable Canadian property solely because it is deemed to be so by a provision of the Act.

New paragraph 116(6)(*a*.1) provides that property described in an inventory of a business carried on in Canada is excluded property for the purposes of section 116 of the Act. This new provision is a result of the change to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1), which now includes as taxable Canadian property the inventory of a business carried on in Canada. Effective after October 1, 1996, new paragraph 116(6)(*a*.1) excludes such inventory from the requirements of section 116. However, the exclusion does not apply to inventory that is real property situated in Canada, a Canadian resource property or a timber resource property.

Clause 14

Former Resident – Credit for Tax Paid

ITA
119

New section 119 of the Act provides a special tax credit in certain cases where the "stop-loss" rule in new subsection 40(3.7) of the Act applies to an individual who ceased to be resident in Canada.

Under amended subsection 128.1(4) of the Act, individuals who emigrate from Canada are treated as having disposed of most properties, for proceeds equal to the fair market value of the properties. Such an individual may therefore be treated as having realized an accrued gain immediately before leaving Canada, and will be subject to tax on the gain. If the individual subsequently receives dividends in respect of the same property, a loss realized on a later disposition of the property may be reduced by new subsection 40(3.7) of the Act, and thus may not be available to offset the gain that

resulted from the subsection 128.1(4) deemed disposition. Part or all of the tax liability arising from the gain would thus remain payable. However, the individual may also have paid tax on those post-departure dividends, under Part XIII of the Act.

New section 119 addresses this possible overlap between the tax resulting from the subsection 128.1(4) deemed disposition of a capital property and the Part XIII tax on dividends that reduce the taxpayer's loss on the property. In general terms, the rule allows a tax credit equal to the tax on those dividends, up to the amount of the tax on the capital gain that arose on emigration from Canada.

More specifically, section 119 allows the individual to deduct, in computing tax otherwise payable under Part I of the Act for the taxation year in which subsection 128.1(4) treated the individual as having disposed of the property, the lesser of two amounts. The first amount, described in paragraph 119(*a*), is in effect the amount of tax attributable to the gain on the property. This amount is computed as the proportion of the individual's Part I tax for that year that the taxable capital gain on the particular property is of the individual's total income for the year, as determined under new paragraph 114(*a*) of the Act.

The second amount, set out in paragraph 119(*b*), is the Part XIII withholding tax paid (or deemed to have been paid) by the individual on dividends that, under new subsection 40(3.7), have reduced the individual's loss from the disposition of the property. This amount is computed as the proportion of the individual's Part XIII tax in respect of dividends in respect of the property that the subsection 40(3.7) loss reduction is of the total amount of those dividends.

A consequential amendment to subsection 152(6) of the Act ensures that any necessary assessments of tax will be made in order to take account of the effect of new section 119.

New section 119 applies to dispositions after December 23, 1998 by individuals who cease to be resident after October 1, 1996.

Clause 15

ITA
120(2.1)

Subsection 120(2.1) of the Act provides a special rule for computing the amount that is considered, under subsection 120(2), to have been paid on behalf of an individual's tax for a taxation year. This special rule applies where existing section 119 of the Act applies to the individual for the year. Existing section 119 is no longer active, and is replaced with a new, unrelated rule. Subsection 120(2.1) is therefore repealed, for the 1996 and subsequent taxation years.

Clause 16

Income Not Earned in a Province

ITA
120

Section 120 of the Act sets out rules that integrate the federal and provincial income tax systems for individuals. Subsection 120(1) imposes an additional amount of federal tax on income that is not subject to provincial or territorial tax, while subsection 120(2) provides part of the tax abatement for income earned in Quebec (the rest is found in legislation concerning federal-provincial fiscal arrangements).

For the purposes of subsections 120(1) and (2) of the Act, subsection 120(3) defines the phrase "the individual's income for the year" where sections 114 or 115 of the Act – dealing with part-year residents and non-residents, respectively – apply in respect of the individual for the year. Subsection 120(3) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment makes no substantive change, but keeps the reference in step with the changes to section 114. For additional information, see the commentary on section 114.

Subsection 120(4) includes a definition of "tax otherwise payable under this Part". The amendment to this subsection, which applies to

the 1996 and subsequent taxation years, excludes from the definition any deduction from tax in respect of the new credit, under section 119 of the Act, for certain taxes paid by a former resident of Canada.

Clause 17

Minimum Tax

ITA
120.2(4)

Section 120.2 of the Act allows an individual to apply additional taxes, imposed for a given year under the section 127.5 minimum tax, against the individual's ordinary Part I tax liabilities for following years. Paragraph 120.2(4)(*b*) prevents such a carryforward in respect of any taxation year in which the taxpayer has elected under existing section 119 of the Act. Existing section 119 no longer applies, and is replaced with an unrelated new rule. Subsection 120.2(4) is therefore restructured to remove its reference to section 119. This amendment applies to the 1996 and subsequent taxation years.

Clause 18

Deduction from Tax Payable where Employment out of Canada

ITA
122.3(1)(*e*)

Section 122.3 of the Act provides a tax credit to Canadian residents who are employed outside Canada by a specified employer for at least six months in connection with resource, construction, installation, agricultural or engineering contracts or for the purpose of obtaining those contracts. This credit – commonly known as the Overseas Employment Tax Credit (OETC) - effectively eliminates 80% of the Canadian tax arising on the first $100,000 of salary or wages earned from such foreign employment.

The OETC is determined by multiplying an employee's Part I tax otherwise payable for a taxation year by a fraction: the numerator of

that fraction, determined under paragraphs 122.3(*c*) and (*d*) of the Act, generally consists of the lesser of $80,000 and 80% of the individual's overseas employment income for the year; the denominator, determined under paragraph 122.3(1)(*e*), is the individual's income for the year (or, where section 114 of the Act applies, for the period or periods in the year throughout which the individual is resident in Canada) reduced by certain deductions listed in subparagraph 122.3(1)(*e*)(iii).

Paragraph 122.3(1)(*e*) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment makes no substantive change, but keeps the reference in step with the changes to section 114. For additional information, see the commentary on section 114.

Clause 19

Foreign Tax Credit

ITA
126

Section 126 of the Act provides rules under which taxpayers may deduct, from tax otherwise payable, amounts they have paid in respect of foreign taxes. The present amendments introduce three sorts of changes to these "foreign tax credit" rules. Most importantly, a new foreign tax credit is introduced for non-resident individuals who were formerly resident in Canada. This new credit, along with a comparable credit for non-resident beneficiaries of trusts that are resident in Canada, is found in new subsections 126(2.21) and (2.22).

Second, the existing foreign tax credit for non-residents of Canada, in subsection 126(2.2), is modified to reflect changes to the rules that apply to emigrant taxpayers under subsection 128.1(4) of the Act.

Third, several of the provisions in section 126 are modified to take account of changes to section 114 of the Act.

All of these changes are described in detail in the following notes.

Foreign Tax Deduction

ITA
126(1)(*b*)(ii)(A)

Subsection 126(1) of the Act provides a tax credit in respect of foreign non-business income tax – that is, foreign taxes levied on investment and other non-business income. The credit is determined by multiplying the taxpayer's Part I tax otherwise payable for a taxation year by a fraction: the numerator of that fraction, determined under 126(1)(*b*)(i), consists of the taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) from sources in the particular country calculated on certain assumptions; the denominator of that fraction, determined under paragraph 126(1)(*b*)(ii), consists generally of the amount by which the taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) exceeds the deductions listed in subclause 126(1)(*b*)(ii)(A)(III).

Clause 126(1)(*b*)(ii)(A) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114 of the Act. The amendment removes a reference in subclause 126(1)(*b*)(ii)(A)(I) to section 114, updates the reference to that section in the following subclause, and simplifies subclause 126(1)(*b*)(ii)(A)(III)'s reference to the taxpayer's taxable income for the year. These changes keep the provision in step with the changes to section 114. For additional information, see the commentary on section 114.

Amount Determined for Purposes of Paragraph (2)(*b*)

ITA
126(2.1)(*a*)(ii)(A)

Subsection 126(2.1) of the Act sets out a limit for the amount of a taxpayer's deduction under subsection 126(2) in respect of businesses carried on by the taxpayer in a country other than Canada.

The limit is the total of amounts computed under paragraphs 126(2.1)(*a*) and (*b*). The paragraph (*a*) amount is computed by

multiplying the taxpayer's Part I tax otherwise payable for a taxation year by a fraction. The numerator of that fraction, determined under subparagraph 126(2.1)(*a*)(i), generally consists of a taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) from businesses carried on by the taxpayer in the particular country. The denominator of this fraction, determined under subparagraph 126(2.1)(*a*)(ii), consists generally of the amount by which the taxpayer's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the taxpayer is resident in Canada) exceeds the deductions listed in subclause 126(2.1)(*a*)(i)(A)(III).

Clause 126(2.1)(*a*)(ii)(A) is amended, with application to the 1998 and subsequent taxation years, as a consequence of changes to section 114. The changes update the references in the clause to section 114. For additional information, see the commentary on section 114.

Non-resident's Foreign Tax Deduction

ITA
126(2.2)

Canada generally makes foreign tax credits available only to persons who are resident in Canada. The only current exception to this principle is subsection 126(2.2), which provides a foreign tax credit to a non-resident individual who, as an emigrant from Canada, made the election provided under existing subparagraph 128.1(4)(*b*)(iv) of the Act in respect of one or more properties that were not taxable Canadian property.

With this election and the provision of security, the individual emigrant could choose to treat the properties as taxable Canadian property. That meant, on the one hand, that the individual was not treated as having disposed of those properties on emigration; but on the other hand, that any post-departure gain on the properties remained subject to Canadian tax (assuming no tax treaty applied). On the ultimate disposition of the deemed taxable Canadian property, subsection 126(2.2) allowed the former Canadian resident a credit for foreign tax on the gain.

Under the new rules for emigrants from Canada, the election in subparagraph 128.1(4)(*b*)(iv) is no longer available. Subsection 126(2.2) is therefore amended to apply only to properties that were deemed to be taxable Canadian properties under the election as it read before October 2, 1996. This amendment applies to the 1996 and subsequent taxation years.

Subsection 126(2.2) is also amended, with application to the 1998 and subsequent taxation years, to reflect the changes to section 114 of the Act. For additional information, see the commentary on section 114.

Former Resident

ITA
126(2.21) and (2.22)

In some circumstances, an individual who is a former resident of Canada may be subject to tax in another country on a gain that accrued while the individual was resident in Canada, and that has already been subject to Canadian tax on emigration. Similarly, the non-resident beneficiary of a Canadian trust who receives trust property on a distribution may be taxed abroad on a gain that accrued while the property was held by the trust, and that has been taxed in Canada on the distribution.

EXAMPLE – double taxation of pre-departure gain

Lee emigrates from Canada to Treatyland at a time when he owns a house in Treatyland. Lee bought the house while resident in Canada; at the time of emigration, the house has an adjusted cost base of $60,000 and a fair market value of $100,000. The resulting $40,000 latent capital gain will produce a taxable capital gain of $30,000 immediately before departure, and that taxable capital gain will be subject to Canadian tax.

Assume that the house increases in value to $120,000 after Lee leaves Canada, and that Lee sells the property in 2005 for that amount.

In principle, the gain that has been subject to Canadian tax ought not to be taxed a second time. However, Treatyland may not yet recognize the tax effect of changes in residence and may simply tax Lee, when the property is disposed of, on the full amount of the his gain since first acquiring the property. In that case, Treatyland will tax not only the $20,000 gain realized since Lee left Canada, but also the $40,000 gain that accrued while Lee was resident in Canada. In the end, Lee is taxed twice on the same gain.

The best way to alleviate such results is to modify Canada's tax treaties to ensure appropriate recognition for the Canadian tax that arises on departure. However, treaty changes can take considerable time. As an interim measure, new subsection 126(2.21) provides limited credits against an individual's Canadian tax that arises in the year of the individual's departure from Canada, for post-departure foreign taxes. These foreign taxes can comprise both business-income and non-business-income taxes (defined in subsection 126(7)). New subsection 126(2.22) provides similar limited credits against a trust's Canadian tax that arose in the year of a distribution by the trust to a non-resident beneficiary, for the beneficiary's subsequent foreign taxes.

Subsections 126(2.21) and (2.22) will apply, in most cases, only to foreign taxes that are paid in respect of dispositions before 2007, and only for taxes paid to countries with which Canada has a tax treaty. Exceptions are provided for taxes imposed by a foreign country on gains on real property situated in that country. In keeping with the general international principle that the country in which real property is located has the first right to tax gains on that real property, Canada will always provide credit for such taxes. Similarly, credit for those taxes will be available regardless whether Canada has a tax treaty with the particular country.

More specifically, subject to the conditions described above, the credit provided to an individual under new subsection 126(2.21) is computed on a property-by-property basis, as the lesser of two amounts.

The first amount, described in paragraph 126(2.21)(*a*), is the total of those portions of the foreign taxes paid in respect of the disposition of the property that can reasonably be considered to relate to the

portion of the gain or profit in question that arose before the individual's emigration from Canada. Where the property in question is real property situated outside Canada, the creditable taxes are those paid to the government of the country where the property is located or, if the property is disposed of before 2007, to the government of another country in which the individual is resident and with which Canada has a tax treaty.[2]

The second amount, described in paragraph 126(2.21)(*b*), is in effect the amount of the individual's tax under Part I of the Act for the year of emigration that is attributable to the deemed disposition of the particular property under paragraph 128.1(4)(*b*) of the Act. In determining this amount, previous applications of subsection 126(2.21) are taken into account.

EXAMPLE – operation of new credit

In the example above, Lee will be able to claim a credit for the lesser of 2/3 ($40,000/$60,000) of the Treatyland tax on the total amount of the gain, and the Canadian tax that arose because of the deemed disposition on emigration. The credit will be applied against Lee's Canadian tax for the emigration year, with amended subsection 152(6) allowing any necessary reassessment.

Note that since the property in question (a house) is real property, and the tax arose before 2007, Lee could also claim a credit for tax paid to another treaty country in respect of his pre-emigration gain, if he lived in that other country. For example, if the house were located not in Treatyland but in Nontreatyland, Lee could – as a resident of Treatyland – claim a credit in respect of both Treatyland tax (if the tax arises before 2007) and Nontreatyland tax (even if the tax arises after 2006).

New subsection 126(2.22) sets out a comparable rule in respect of distributions after October 1, 1996 by Canadian-resident trusts to

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[2] Note that a tax paid to the government of a political subdivision of a country is included for this purpose in the taxes paid to the government of the country. See the definitions "business-income tax" and "non-business-income tax" in subsection 126(7) of the Act.

non-resident individuals. While the general operation of this rule is very similar to that of new subsection 126(2.21), it should be noted that in this case the credit involves two taxpayers: foreign taxes paid by the beneficiary are creditable against Canadian taxes paid by the trust.

A consequential amendment to subsection 152(6) of the Act ensures that any necessary assessments of tax will be made in order to take account of the effect of new subsections 126(2.21) and (2.22).

New subsections 126(2.21) and (2.22) apply to the 1996 and subsequent taxation years.

Where Foreign Credit Available

ITA
126(2.23)

New subsection 126(2.23) of the Act limits the availability of the new foreign tax credits under subsections 126(2.21) and (2.22). This rule requires that in computing, for the purposes of these new credits, the foreign tax an individual has paid in respect of the disposition of a property, the individual must first take into account any relevant tax credit (or other reduction in tax) that the individual is entitled to in respect of the property under the law of a foreign country or under a tax treaty between Canada and a foreign country. This is intended to ensure that the credits under new subsections 126(2.21) and (2.22) are only available to the extent that another country is not required to give credit for Canadian tax in respect of the disposition or a prior disposition of the property.

Subsection 126(2.23) applies to the 1996 and subsequent taxation years.

Employees of International Organizations

ITA
126(3)

Subsection 126(3) of the Act provides a tax credit to Canadian-resident employees of international governmental organizations other than prescribed international governmental

organizations. The amount of the credit is limited to the amount of any levy in lieu of taxes charged to the employee by the organization on the employee's remuneration.

The credit that may be claimed under subsection 126(3) is determined by multiplying the employee's Part I tax otherwise payable for a taxation year by a fraction. The numerator of that fraction, determined under paragraph 126(3)(*a*), consists of the employee's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the employee is resident in Canada) from employment with the organization; the denominator of the fraction, determined under paragraph 126(3)(*b*), consists generally of the amount by which the employee's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the employee is resident in Canada) exceeds the deductions listed in subparagraph 126(3)(*b*)(iii).

Subsection 126(3) is amended, with application to the 1998 and subsequent taxation years, to revise its references to section 114 of the Act to reflect changes to that section. For additional information, see the commentary on section 114.

Clause 20

Application of Section 127.5

ITA
127.55

Section 127.55 of the Act limits the application of the alternative minimum tax set out in section 127.5 of the Act. Paragraph 127.55(b) refers to existing section 119. Existing section 119 is no longer active, and is replaced with a new, unrelated rule. Paragraph 127.55(b) is therefore repealed, for the 1996 and subsequent taxation years.

Clause 21

Changes in Residence

ITA
128.1

Section 128.1 of the Act sets out the income tax effects of becoming or ceasing to be resident in Canada. The present amendments make several important additions to section 128.1, including:

- a more comprehensive deemed disposition of property by individual emigrants;
- greater clarity as to the exclusion of certain pension and other rights from the deemed dispositions on emigration and immigration;
- special accommodation of individuals (other than trusts) who, having emigrated from Canada, re-establish residence in Canada;
- the ability for post-emigration losses in effect to reduce gains realized as a result of the deemed disposition on emigration;
- information reporting requirements for individuals who emigrate from Canada; and
- in certain circumstances, a deemed end to the fiscal period of a business carried on by an individual emigrant.

In addition, these amendments make a number of clarifying and updating changes to section 128.1. They also revise the section as necessary to reflect other amendments such as the restructured definition "taxable Canadian property" and the changes to section 114 of the Act.

Immigration

ITA
128.1(1)(*b*)(i)

Subsection 128.1(1) of the Act sets out rules that apply where a taxpayer becomes resident in Canada. Paragraph 128.1(1)(*b*) treats a taxpayer who becomes resident in Canada as having disposed of the taxpayer's property, with certain exceptions, for proceeds equal to the property's fair market value. This disposition is deemed to have taken place immediately before the time that is immediately before the time at which the taxpayer becomes resident.

The properties excluded from the deemed disposition on immigration under paragraph 128.1(1)(*b*) are essentially those properties that were, ignoring any relevant tax treaty, already subject to tax in Canada. Subparagraph 128.1(1)(*b*)(i) sets out one type of excluded property, being taxable Canadian property. Subparagraph 128.1(1)(*b*)(i) is amended, with application after October 1, 1996, to simplify its description of taxable Canadian property. This change is a consequence of the relocation of the main definition of taxable Canadian property to subsection 248(1) of the Act.

ITA
128.1(1)(*b*)(iv) and (v)

As described above, paragraph 128.1(1)(*b*) of the Act provides for a deemed disposition of most properties owned by a taxpayer who becomes resident in Canada. Subparagraph 128.1(1)(*b*)(iv) excludes from this deemed disposition property that was the subject of an election under existing subparagraph 128.1(4)(*b*)(iv) of the Act – an election not to be treated as having disposed of the property on an earlier emigration from Canada. One of the effects of having made the election is that the property is deemed to be taxable Canadian property, which in any case is (as a result of subparagraph 128.1(1)(*b*)(i)) excluded from the deemed disposition on immigration. The current version of subparagraph 128.1(1)(*b*)(iv) is thus not necessary, and can be replaced with a different rule.

New subparagraph 128.1(1)(b)(iv) excludes from the deemed disposition on immigration any property (other than an interest acquired for no consideration in a non-resident testamentary trust)

that is "excluded personal property" of the taxpayer. As defined in new subsection 128.1(9) of the Act, the term "excluded personal property" includes many kinds of income rights and other properties. Since the term also encompasses rights under agreements referred to in subsections 7(1) and 7(1.1) of the Act (options of employees to acquire shares of a corporation or units of a mutual fund trust), existing subparagraph 128.1(1)(b)(v), which refers only to employee stock options, is unnecessary and is repealed.

These changes apply to changes in residence that occur after October 1, 1996.

Fiscal Period

ITA
128.1(4)(*a*.1)

Subsection 128.1(4) sets out rules that apply where a taxpayer ceases to be resident in Canada. New paragraph 128.1(4)(*a*.1) provides that the fiscal period of any business carried on by an individual emigrant (other than a trust), otherwise than through a permanent establishment in Canada, is deemed to have ended immediately before the emigration time and a new fiscal period of the business is deemed to have begun at the emigration time. This ensures the appropriate measurement of the individual's pre-departure income or loss from the business. The paragraph, which applies to changes in residence after October 1, 1996, also allows the emigrant to choose a new fiscal period of the business.

Deemed Disposition

ITA
128.1(4)(*b*)

Paragraph 128.1(4)(*b*) treats a taxpayer who ceases to be resident in Canada as having disposed of the taxpayer's property, for proceeds equal to fair market value. This disposition is deemed to have taken place at a "time of disposition" that is immediately before the time that is immediately before the time the taxpayer ceases to be resident. The time of cessation of residence is referred to in the provision as the "particular time" and in these notes as the "emigration time."

Where the taxpayer is an individual, certain types of property are exempted from the deemed disposition. These properties, generally, are those that would be subject to Canadian taxation in the hands of a non-resident.

Paragraph 128.1(4)(*b*) is amended to ensure that this policy is better reflected in the legislation. Under amended paragraph 128.1(4)(*b*), an individual emigrant from Canada is treated as having disposed of all property other than:

(i) real property situated in Canada, Canadian resource properties and timber resource properties;

(ii) property of a business carried on by the individual, at the emigration time, through a permanent establishment in Canada – including capital property, eligible capital property and property described in the inventory of the business;

(iii) property that is "excluded personal property" of the individual. As defined in new subsection 128.1(9) of the Act, the term "excluded personal property" includes many kinds of income rights and other properties. See the commentary on new subsection 128.1(9) for more details.

(iv) certain property of short-term residents (see below); and

(v) certain property of a short-term non-resident (see the commentary on new subsection 128.1(6) of the Act).

Since the definition "excluded personal property" in new subsection 128.1(9) encompasses rights under agreements referred to in subsections 7(1) and 7(1.1) of the Act (options of employees to acquire shares of a corporation or units of a mutual fund trust), existing subparagraph 128.1(4)(*b*)(vi), which refers only to employee stock options, is unnecessary and is repealed.

Under new subparagraph 128.1(4)(*b*)(iv), an individual (other than a trust) who has been resident in Canada for 60 months or less during the 10-year period preceding the cessation of residence is not deemed to dispose of any property that the individual owned on becoming resident in Canada, or that the individual inherited after becoming

resident here. (This exception was formerly provided under subparagraph 128.1(4)(*b*)(v) of the Act.)

Where an individual (other than a trust) ceases to be resident in Canada after October 1, 1996 and re-establishes Canadian residence at a later time, a special rule, set out in new subsection 128.1(6), enables the individual to exclude all property from the deemed disposition in respect of the cessation of residence. For additional information, see the commentary on subsection 128.1(6).

Two additional points should be noted. First, where an emigrating individual owns shares of a corporation which owns a life insurance policy under which the individual's life is insured, upon the deemed disposition at departure of the individual's shares in the corporation, a special rule contained in amended subsection 70(5.3) of the Act will be used in the valuation of the corporation's shares – the cash surrender value of the life insurance policy owned by the corporation will be treated as the fair market value of that policy. Second, the *Income Tax Regulations* will be amended after these amendments receive Royal Assent, so that the definition "permanent establishment" in Regulation 8201 will apply for the purpose of subparagraph 128.1(4)(*b*)(ii).

Amended paragraph 128.1(4)(*b*) generally applies after October 1, 1996. In addition, clause 22 provides that an individual who ceased to be a Canadian resident after 1992 and before October 2, 1996 may also choose to exclude from the deemed disposition at emigration property described in the definition "excluded personal property" in new subsection 128.1(9) of the Act. This election must be made in writing filed with the Minister of National Revenue within six months of these amendments receiving Royal Assent. It should also be noted that this election will cause amended subparagraph 115(1)(*a*)(i) of the Act to apply. For additional information, see the commentary on subsection 115(1).

Individual – Elective Disposition, etc.

ITA
128.1(4)(*d*) to (*e*)

Paragraph 128.1(4)(*b*) treats taxpayers that cease to be resident in Canada as having disposed of their property, subject to certain

exceptions, for proceeds equal to the property's fair market value. Paragraph 128.1(4)(*d*) allows an individual (other than a trust) to choose to treat certain of the properties that would otherwise be exempt from that deemed disposition as having been disposed of. An emigrant might make this choice if, for example, the emigrant wanted to realize a latent loss on such a property in order to offset a gain resulting from the deemed disposition.

This optional deemed disposition is retained in amended paragraph (*d*). In addition, the paragraph reproduces the effect of existing paragraph 128.1(4)(*f*), which ensures that losses realized as a result of a paragraph (*d*) election may only offset the increase, if any, in the taxpayer's income as a result of the deemed disposition on emigration. With this effect now provided in paragraph (*d*) itself, paragraph (*f*) is no longer necessary and is repealed.

New paragraph 128.1(4)(*d*.1) is introduced to ensure appropriate tax consequences where an individual (other than a trust) emigrates from Canada holding shares acquired under a employee stock option granted by a Canadian-controlled private corporation (CCPC). Under section 7 of the Act, an individual who acquires shares under an employee stock option agreement is deemed to have received an employment benefit equal to the fair market value of the shares at the time of acquisition less the price paid by the individual to acquire the shares. In the case of CCPC options, subsection 7(1.1) defers the income inclusion to the year in which the individual disposes of the shares. When this occurs, the amount of the benefit is added (by virtue of paragraph 53(1)(*j*)) to the adjusted cost base (ACB) of the shares, thus affecting the capital gain (or loss) determined in connection with the disposition of the shares.

New subsection 7(1.6) provides that the deemed disposition rules in subsection 128.1(4) do not apply for the purposes of section 7. Thus, in the case of shares acquired by an individual under a CCPC option, there is no income inclusion under section 7 triggered by the individual's emigration and similarly no adjustment to the ACB of the shares under paragraph 53(1)(*j*). However, for capital gains purposes, new paragraph 128.1(4)(*d*.1) applies to reduce the individual's proceeds of disposition in respect of the shares by the amount that would have been added to the ACB of the shares (by virtue of paragraph 53(1)(*j*)) had there been a deemed disposition for the purposes of section 7. This ensures that the individual's capital gain

(or loss) determined in connection with the deemed disposition on emigration takes into account the amount that will eventually be taxed under section 7.

EXAMPLE – CCPC shares acquired under employee stock option

From 1993 to 1998, Katharine was employed by a Canadian-controlled private corporation (CCPC). Part of Katharine's compensation for 1995 was an option to buy 100 shares of the corporation at a price of $1 a share. In 1996, when the shares were worth $2 each, Katharine exercised the option. In 1999, when the shares are worth $6 each, Katharine emigrates from Canada.

Under amended paragraph 128.1(4)(b), Katharine will be treated as having disposed of the shares for proceeds of $600 (= 100 x $6 fair market value). Ordinarily, the disposition would trigger an income inclusion of $100 under section 7 (= 100 x ($2 - $1)), a corresponding addition of $100 to the ACB of the shares under paragraph 53(1)(j) (resulting in a total ACB of $200), a deduction of $25 (= .25 x $100) under paragraph 110(1)(d.1) in computing taxable income, and a taxable capital gain of $300 (= .75 x ($600 - $200).

However, as a result of new subsection 7(1.6), Katharine will not be subject to any income inclusion under section 7 in respect of the deemed disposition and, thus, there will be no addition to the ACB of the shares under paragraph 53(1)(j). Were it not for new paragraph 128.1(4)(d.1), this would result in Katharine having a taxable capital gain of $375 (= .75 ($600 - $100)) on the deemed disposition of the shares under paragraph 128.1(4)(b), and an additional income inclusion of $100 minus $25 on the actual disposition of the shares.

Paragraph 128.1(4)(d.1) addresses this by deducting from the proceeds of disposition, for capital gains purposes, the $100 that paragraph 53(1)(j) would have added to the ACB of the shares if there had been an income inclusion under section 7 on emigration. As a result, Katharine will realize a taxable capital gain of $300 on the deemed disposition of the shares (and an additional income inclusion of $100 less $25 when she actually disposes of the shares).

Existing paragraph 128.1(4)(*e*) relates to the election, under existing subparagraph (*b*)(iv), to exclude from the deemed disposition on emigration a property that is not taxable Canadian property. If an emigrant uses this optional exclusion, paragraph (*e*) treats the property as taxable Canadian property of the taxpayer until the property is disposed of or the taxpayer returns to Canada. Since the subparagraph (*b*)(iv) election is no longer available, paragraph (e) is repealed.

New paragraph 128.1(4)(*d*.1) applies to changes in residence after 1992. The other amendments described above apply to changes in residence after October 1, 1996.

Instalment Interest

ITA
128.1(5)

Sections 155 and 156 of the Act set out rules for computing the instalment obligations of individuals for a taxation year. Subsections 161(2), (4) and (4.01) of the Act set out rules for computing the interest payable by taxpayers on any deficiency in instalments made during a taxation year.

New subsection 128.1(5) of the Act provides a special rule for computing the instalment and instalment interest obligation of an individual for a taxation year in which the individual ceases to be a resident of Canada. This subsection applies to exclude, in computing an individual's liability for instalments for the year, the tax attributable to any deemed disposition under paragraph 128.1(4)(*b*), where that paragraph has the effect of increasing the individual's total tax payable under Parts I and I.1 of the Act for the year.

New subsection 128.1(5) applies to changes in residence that occur after October 1, 1996.

Returning Former Resident

ITA
128.1(6)

New subsection 128.1(6) of the Act provides special rules that apply to an individual (other than a trust) who ceases to be resident in Canada at any time after October 1, 1996 (the "emigration time") and re-establishes Canadian residence at any particular time after that time. These rules allow the individual in effect to unwind the application of paragraphs 128.1(4)(*b*) and (*c*) to properties that were owned by the individual throughout the period beginning at the emigration time and ending at the particular time.

In broad terms, new subsection 128.1(6) means that an emigrant who returns to Canada at any time after emigration will no longer be treated as having realized accrued gains on departure. Four points should be noted about these rules. First, because there is no certain way of knowing which emigrants will return to Canada, this rule does not directly affect the obligations that arise on emigration. Rather, the rule does allow the returning individual retrospectively to modify the obligations. As a practical matter, it is expected that most individuals who plan to return to Canada will use the security provisions of subsection 220(4.5) to defer payment of any tax arising as a result of emigration. In that case, the main effect of new subsection 128.1(6) will be to allow the security to be given back intact to the returning emigrant.

Second, these rules do not affect any interest or penalties owing by an individual, including interest and penalties levied on taxes in respect of the individual's emigration, calculated without reference to the rule.

Third, these rules include features designed to prevent surplus-stripping. Without these features, a resident of Canada could use a temporary period of non-residence to extract, as dividends subject only to low-rate withholding tax, value that represents accrued gains.

Fourth, the rules require separate elections in respect of taxable Canadian property (paragraph (*a*)) and other property (paragraph (*c*)). The effects of the elections differ: the paragraph (*a*) election removes

taxable Canadian properties from the deemed disposition and reacquisition on emigration, subject to special rules in paragraph (*b*); while the paragraph (*c*) election adjusts the emigration proceeds of disposition and the returning adjusted cost base of the other properties. Each election covers all property of the given sort, but the returning individual may choose to make one election and not the other.

Paragraph 128.1(6)(*a*) allows the individual to make an election in respect of property that was taxable Canadian property at the emigration time and throughout the period that the individual was non-resident. The effect of making this election is that paragraphs 128.1(4)(*b*) and (*c*) do not apply in respect of all such properties of the individual for the taxation year that ended at the emigration time.

Where an individual has made an election under paragraph 128.1(6)(*a*), paragraph 128.1(6)(*b*) provides special surplus-stripping rules in respect of the property covered by the election. The basic purpose of paragraph (*b*) is to ensure that gains that accrued before emigration from Canada, and that have been extracted in the form of dividends during the individual's residence abroad, are subject to Canadian tax as gains.

Paragraph 128.1(6)(*b*) applies, in respect of a paragraph (*a*) taxable Canadian property, where two conditions are met:

- a loss has accrued on the property during the individual's period of non-residence – that is, the property's fair market value immediately before the individual becomes resident is less than its fair market value when the individual left Canada; and

- if the individual had acquired the property for its fair market value on emigration, and disposed of the property immediately before becoming resident, new subsection 40(3.7) (which applies to current and former non-resident individuals a version of the stop-loss rules in section 112 of the Act) would reduce the loss.

Where these conditions are met, paragraph (*b*) has four related effects. First, it treats the individual as having disposed of the property immediately before emigration, notwithstanding the

paragraph (*a*) election. Second, it establishes the individual's proceeds of disposition of the property at that time, as the total of:

(A) the adjusted cost base of the property on emigration; and

(B) the amount, if any, by which the notional loss reduction under subsection 40(3.7) exceeds the lesser of (I) the adjusted cost base on emigration, and (II) an amount chosen by the individual.

Third, paragraph 128.1(6)(*b*) treats the individual as having reacquired the property on emigration, at a cost equal to the excess, if any, of the property's adjusted cost base on emigration (the (A) and (B)(I) amount above) over the lesser of the notional loss reduction under subsection 40(3.7) and the amount chosen by the individual in (B)(II) above.

The practical result of the second and third effects is that the income (in this case, dividends) that gives rise to the notional subsection 40(3.7) loss reduction is recharacterized as gains. Those gains are, subject to election, distributed between the post-return period and the deemed disposition on emigration.

Fourth, paragraph 128.1(6)(*b*) treats the individual, for the purposes of new section 119 of the Act, as having disposed of the property immediately before returning to Canada. This ensures that appropriate credit is given for any tax withheld under Part XIII of the Act on the income that triggered the application of paragraph 128.1(6)(*b*).

EXAMPLE – 128.1(6)(b)

Marie emigrates from Canada in 1999. Marie is the majority shareholder of a Canadian-controlled private corporation (CCPC) when she leaves Canada. The shares, which are taxable Canadian property to Marie, have a fair market value (FMV) at that time of $50,000 and an adjusted cost base (ACB) of $15,000, for a latent gain of $35,000. Marie receives $35,000 of dividends from the CCPC in 2000. In 2001, Marie returns to Canada. At that time, the shares have a FMV of $15,000. Marie uses the election in subsection 128.1(6) to

minimize the tax consequences of her earlier emigration from Canada.

If Marie actually disposed of the shares immediately before re-establishing Canadian residence, subsection 40(3.7) of the Act would reduce her loss. Therefore, paragraph 128.1(6)(b) applies in respect of the shares.

Under paragraph 128.1(6)(b), Marie is treated as having disposed of and reacquired the shares on emigration. Assuming she elects $10,000, Marie's emigration proceeds of disposition are deemed to be $40,000, being the emigration ACB ($15,000) plus the difference between the subsection 40(3.7) reduction ($35,000) and the ACB/specified amount ($10,000). Marie thus realizes a $25,000 capital gain in the emigration year.

Marie's reacquisition cost is deemed to be $5,000, being the original ACB ($15,000) minus the lesser of the subsection 40(3.7) reduction ($35,000) and the specified amount ($10,000). Since the shares have a FMV of $15,000, Marie will eventually realize a gain of $10,000 (subject to other adjustments to ACB and FMV).

The result is that Marie's $25,000 gain on departure and remaining $10,000 latent gain equal the $35,000 she extracted in the form of dividends. The full $35,000 will thus be realized as capital gains, and section 119 will give Marie credit for any withholding tax she paid on the dividends.

Marie could have altered the timing of her capital gains on the shares. For example, if she had elected an amount of $5,000 under paragraph (a) in respect of the property, Marie's emigration proceeds of disposition would have been $45,000 ($15,000 ACB + ($35,000 40(3.7) reduction - $5,000 elected amount)), giving an emigration gain of $30,000. This would have been balanced by an increase in Marie's reacquisition cost from $5,000 to $10,000, which in turn would reduce the eventual gain Marie will realize on the shares.

New paragraph 128.1(6)(*c*) allows the returning individual to make an election, in respect of each property the individual owned at the emigration time and throughout the non-resident period that is subject

to a deemed acquisition on immigration, under paragraph 128.1(1)(*c*) of the Act. In general, this describes property other than taxable Canadian property. The election adjusts, on a property-by-property basis, both the proceeds of disposition that were deemed to arise as a consequence of the deemed disposition in paragraph 128.1(4)(*b*) on the individual's earlier emigration, and the deemed acquisition cost under paragraph 128.1(1)(*c*).

Specifically, each of these amounts is adjusted by subtracting the least of:

- the amount that would otherwise be the individual's gain on the property as a result of the deemed disposition in paragraph 128.1(4)(*b*),

- the fair market value of the property immediately before the individual becomes resident in Canada, and

- any other amount specified by the individual.

As a result of these adjustments, the returning individual can defer Canadian tax on any gain that had accrued before emigration, while still protecting from Canadian tax gains that accrued during periods of non-residence.

EXAMPLE – 128.1(6)(c)

Noah emigrates from Canada in 1999. Noah owns shares of a foreign corporation. When Noah leaves, the shares have a fair market value of $25,000 and an adjusted cost base of $15,000, for an accrued gain of $10,000. In 2012, Noah returns to Canada. At that time the shares have a fair market value of $80,000. Noah chooses to take advantage of the election in paragraph 128.1(6)(c) to control the tax consequences of ceasing to be a Canadian resident. Because he had a capital loss in 1999 of $7,000 from another source, Noah is content to realize a $7,000 capital gain on emigration, but he does not want to realize the other $3,000 accrued gain. Noah therefore chooses an elected amount of $3,000.

Noah's proceeds of disposition under paragraph 128.1(4)(b) are deemed to be $22,000, being the proceeds of disposition that

would otherwise be determined under paragraph 128.1(4)(b) ($25,000) minus the least of:

- *the amount that would have been Noah's gain on the shares under 128.1(4)(b) had this paragraph not applied ($10,000);*
- *the fair market value of the property at the particular time ($80,000); and*
- *the elected amount specified ($3,000).*

Noah thus reduces his emigration-year gain to $7,000. The same $3,000 that reduces Noah's emigration proceeds is also subtracted from his reacquisition cost under paragraph 128.1(1)(c) ($80,000), leaving his new adjusted cost base in respect of the property $77,000. The property thus has a latent gain of $3,000 at the time Noah re-establishes Canadian residence in 2012.

Noah could have deferred tax on the full $10,000 gain that accrued before emigration, by increasing his elected amount in respect of the shares to $10,000.

New subsection 128.1(6) applies to changes in residence that occur after October 1, 1996. The subsection provides that, notwithstanding the Act's ordinary rules governing assessments, any necessary assessments of tax will be made in order to take account of the effect of this new subsection.

A special transitional rule accommodates individuals who cease to be resident in Canada after October 1, 1996 and before these amendments receive Royal Assent, and who wish to make elections under new subsection 128.1(6). The elections for these transition period emigrants will be considered to have been made in a timely manner if they are made on or before the individual's filing-due date for the taxation year that includes the day on which Royal Assent is received.

In addition, the Regulations will be amended to ensure that the Minister of National Revenue has discretion under the "fairness package" to allow elections under new subsection 128.1(6) to be late-

filed. For additional information, see the commentary in the Appendix.

Post-emigration loss

ITA
128.1(7)

New subsection 128.1(7) of the Act provides relief to an individual (other than a trust) who disposes of a taxable Canadian property, after having emigrated from Canada, for proceeds that are less than the deemed proceeds that arose under paragraph 128.1(4)(*b*) in respect of the property when the individual emigrated.

Under subsection 128.1(7) the individual may elect to reduce the proceeds of disposition that were deemed to arise under paragraph 128.1(4)(*b*) in respect of a property by the least of:

- an amount specified by the individual;
- the amount that would be the individual's gain from the deemed disposition of the property under paragraph 128.1(4)(*b*), but for this subsection; and
- the amount that would be the individual's loss from the disposition of the property at the time the property is actually disposed of, if the loss were determined with reference to every other provision in the Act (including the stop-loss rules in subsection 40(3.7) and section 112 of the Act) but this subsection.

The same amount is added to the individual's proceeds of disposition realized at the time of actual disposition.

EXAMPLE – 128.1(7)

Odile emigrates from Canada in 1999, owning a capital interest in a trust resident in Canada that she purchased in 1997. The interest has a fair market value at the emigration time of $150,000 and an adjusted cost base of $40,000, for a latent gain of $110,000 on departure. Odile's tax is assessed on that basis, and she posts security for the tax.

In 2001, Odile sells her trust interest for $60,000. Since Odile has realized a smaller gain than assumed in her tax assessment on emigration, she elects under subsection 128.1(7) to reduce the gain she was deemed to have realized when she emigrated.

To obtain the maximum benefit from the subsection, Odile specifies an amount of $90,000 in respect of the election. Her proceeds of disposition at the emigration time are deemed to be $60,000, being the proceeds of disposition that would otherwise be determined under paragraph 128.1(4)(b) ($150,000) minus the least of:

- *the amount specified ($90,000);*
- *the amount that would have been her taxable gain in respect of the trust interest under 128.1(4)(b) had this paragraph not applied ($110,000); and*
- *the amount that would have been her loss on actual disposition of the trust interest had this paragraph not applied ($150,000 - $60,000 = $90,000).*

The same $90,000 amount is added to Odile's proceeds of the actual disposition of the trust interest. The result is that, in respect of the trust interest, Odile is treated as having realized a $20,000 gain in 1999, and no gain or loss on the actual disposition of the property in 2001.

It should be noted that the election in subsection 128.1(7) does not affect any interest or penalties owing by the individual at the time of making the election, including interest and penalties levied on taxes in respect of the property, calculated without reference to the subsection.

A consequential amendment to subsection 152(6) of the Act ensures that any necessary assessments of tax will be made in order to take account of the effect of new subsection 128.1(7).

New subsection 128.1(7) applies to changes in residence that occur after October 1, 1996. A special transitional rule accommodates individuals who cease to be resident in Canada after October 1, 1996 and before these amendments receive Royal Assent, and who wish to

make the election under new subsection 128.1(7). The election for these transition period emigrants will be considered to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the day on which Royal Assent is received.

In addition, the Regulations will be amended to ensure that the Minister of National Revenue has discretion under the "fairness package" to allow an election under new subsection 128.1(7) to be late-filed. For additional information, see the commentary in the Appendix.

Information Reporting

ITA
128.1(8)

New subsection 128.1(8) of the Act requires an individual who ceases to be resident in Canada after 1995 to file with the Minister of National Revenue, in prescribed form, a list of all the reportable properties that the individual owned at emigration time. This reporting requirement does not apply where the total fair market value of the individual's reportable properties at emigration time is $25,000 or less. However, where an individual owns reportable properties at emigration time with a total fair market value greater than $25,000, the individual must disclose all reportable properties on the information reporting form.

The term "reportable property" is defined in new subsection 128.1(9). For additional information, see the commentary on that subsection.

New subsection 128.1(8) applies to changes in residence that occur after 1995. The information reporting form must be filed on or before the individual's filing-due date for the year of emigration from Canada. However, a special transitional rule accommodates individuals who cease to be resident in Canada after 1995 and before these amendments receive Royal Assent – a form filed by these transition period emigrants will be considered to have been filed in a timely manner if it is filed on or before the individual's filing-due date for the taxation year that includes the day on which Royal Assent for these amendments is received.

Definitions

ITA
128.1(9)

New subsection 128.1(9) of the Act contains two new definitions that are used in section 128.1: "excluded personal property" and "reportable property".

"excluded personal property"

In general terms, an individual's excluded personal property includes rights of the individual to future benefits or other payments under certain plans or arrangements, many of which are employer-sponsored or legislated in nature. It also includes interests of the individual in certain trusts and insurance contracts. The definition "excluded personal property" is relevant for three main purposes.

First, the definition is relevant for paragraphs 128.1(1)(*b*) and (4)(*b*) of the Act, which treat individuals as having disposed of (and to have immediately reacquired) most of their property on immigrating to or emigrating from Canada. With one exception that applies with regard to individuals immigrating to Canada (see subparagraph 128.1(1)(*b*)(iv) for more details), excluded personal property is exempted from these deemed disposition rules.

Second, the definition is relevant for clause 22, which allows individuals who emigrated from Canada after 1992 but before October 2, 1996 to elect to have their excluded personal property exempted from the deemed disposition rules at departure. For additional information, see the commentary to clause 22.

Third, the definition is relevant for the purpose of the information reporting requirement under new subsection 128.1(8) of the Act, which exempts from the reporting requirement certain properties that fall within the definition "excluded personal property".

Paragraph (*a*) of the definition "excluded personal property" refers to rights of the individual under, or an interest of the individual in a trust governed by, certain plans. The plans referred to in this paragraph include pension plans (including registered pension plans (RPPs)), retirement compensation arrangements (RCAs), registered

retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and foreign retirement arrangements (defined in section 6803 of the Regulations to mean certain Individual Retirement Accounts (IRAs) established under the United States *Internal Revenue Code*). Also included are deferred profit sharing plans (DPSPs), employee profit sharing plans (EPSPs), employee benefit plans (EBPs) (other than those described in paragraph (*b*) of this definition) and plans under which the individual has a right to receive remuneration for services rendered in the year or a previous year (including, for example, salary deferral arrangements (SDAs), unfunded bonus deferrals, self-funded leaves of absence and phantom stock plans). Registered supplementary unemployment benefit plans (SUBPs) and registered education savings plans (RESPs) are also included in this paragraph.

Paragraph (*b*) of the definition refers to rights of the individual to a benefit under an EBP that would be an SDA if it were not specifically exempted from being an SDA by virtue of paragraphs (*j*) and (*k*) of the definition of "salary deferral arrangement" in subsection 248(1) of the Act or by virtue of paragraph 6801(*c*) of the Regulations. (The former exemption is for deferred salary arrangements for professional athletes, the latter for deferred salary arrangements for National Hockey League on-ice officials.) Only the right that relates to the portion of the benefit that is attributable to services rendered by the individual in Canada is included in "excluded personal property".

Paragraph (*c*) of the definition refers to rights of the individual under an agreement referred to in subsection 7(1) or (1.1) of the Act. Those subsections refer to agreements under which employees of a corporation or of a mutual fund trust are granted certain rights to acquire shares of the corporation (or a related corporation) or units of the trust.

Paragraph (*d*) of the definition refers to rights of the individual to a retiring allowance.

Paragraph (*e*) of the definition refers to rights of the individual under, or an interest of the individual in, an employee trust, an amateur athlete trust, a cemetery care trust or a trust governed by an eligible funeral arrangement.

Paragraph (*f*) of the definition refers to rights of the individual to receive payments under an annuity contract or an income-averaging annuity contract.

Paragraph (*g*) of the definition refers to rights of the individual to benefits under the *Canada Pension Plan*, the *Québec Pension Plan*, the *Old Age Security Act* and the *Saskatchewan Pension Plan*. It also refers to rights of the individual to benefits under foreign social security arrangements.

Paragraph (*h*) of the definition refers to rights of the individual to benefits referred to in subparagraphs 56(1)(*a*)(iii) to (vi) of the Act. Those subparagraphs refer to death benefits, certain employment insurance benefits, certain benefits provided in connection with the Canada-United States Agreement on Automotive Products and prescribed benefits received under government assistance programs.

Paragraph (*i*) of the definition refers to a right of the individual to a payment out of a NISA ("net income stabilization account") Fund No. 2 under the *Farm Income Protection Act*.

Paragraph (*j*) of the definition refers to an interest of the individual in a personal trust resident in Canada, provided the interest was never acquired (by any person) for consideration and did not arise as a consequence of a transfer by the individual that would be a "qualifying disposition" under subsection 107.4(1) if that subsection were read without reference to paragraphs 107.4(1)(h) and (i). See further in this regard, the commentary on new subsections 107.4(1), 108(6) and 108(7) and new paragraph 107.4(3)(h). Each of these provisions is relevant for the purposes of determining the scope of paragraph (*j*).

Paragraph (*k*) of the definition refers to an interest of the individual in a non-resident testamentary trust, provided the interest was never acquired (by any person) for consideration.

Paragraph (*l*) of the definition refers to an interest of the individual in a life insurance policy in Canada (other than a segregated fund policy).

"reportable property"

The definition "reportable property" is relevant for the purpose of the information reporting requirement, for individuals who emigrate from Canada, under new subsection 128.1(8) of the Act.

"Reportable property" means any property of the individual other than the following:

(a) money that is legal tender in Canada and deposits of such money;

(b) property falling within the definition "excluded personal property" in new subsection 128.1(9) of the Act, except for employee options in shares of corporations or in units of mutual fund trusts, certain interests in personal trusts resident in Canada, and interests in a life insurance policy in Canada;

(c) for individuals (other than trusts) who were resident in Canada for 60 months or less in the 120-month period that precedes the time of emigration, property, other than taxable Canadian property, that was owned by the individual before the individual became resident in Canada or that was acquired by the individual by inheritance or bequest after becoming resident in Canada; and

(d) any item of personal-use property the fair market value of which at emigration time is less than $10,000.

Clause 22

Transition

Paragraph 128.1(4)(*b*) of the Act treats a person who ceases to be resident in Canada as having disposed of most of the person's properties. The changes these amendments introduce to that deemed disposition apply, as a general matter, after October 1, 1996. However, certain of the changes are relieving clarifications of the scope of the deemed disposition. This clause allows a taxpayer who ceased to be resident in Canada after 1992 and before October 2, 1996 to elect that those relieving changes apply to that cessation of

residence. In particular, an election under clause 22 will allow an individual who ceased to be resident in Canada after 1992 and before October 2, 1996 to rely on the new definition "excluded personal property" in new subsection 128.1(9) of the Act in respect of that cessation of residence, for the purpose of the deemed disposition rules under subsection 128.1(4) of the Act.

It should be noted that such an election, which must be made in writing filed with the Minister of National Revenue before the end of the sixth month following Royal Assent to these amendments, will also cause certain changes to section 115 of the Act to apply. For additional information, see the commentary on section 115 and subsection 128.1(4).

Clause 23

Former Resident – Replaced Shares

ITA
128.3

New section 128.3 of the Act applies to shares ("old shares") that were received in exchange for other shares ("new shares") on a tax-deferred basis pursuant to section 51 (convertible property), subparagraphs 85.1(1)(a)(i) or (ii) (transfer of property to a corporation by shareholders), section 86 (exchange of shares by a shareholder in the course of a reorganization of a company's capital) or section 87 (amalgamation) of the Act. For the purposes of section 119 and subsections 126(2.21), (2.22) and (2.23), 128.1(6) and (7), 180.1(1.4) and 220(4.5) and (4.6) of the Act, the individual is deemed not to have disposed of the old shares, and the new shares are deemed to be the old shares. This ensures that the relief available under those provisions is not lost as a result of such a share-for-share exchange.

New section 128.3 applies after October 1, 1996.

Clause 24

Mutual Fund Corporations

ITA
131(8.1)(*a*)

Section 131 of the Act sets out rules relating to the taxation of mutual fund corporations and their shareholders.

Subsection 131(8.1) of the Act provides that a corporation is not a mutual fund corporation after a particular time if, at that time, it is reasonable to conclude that the corporation was established or maintained primarily for the benefit of non-resident persons. Two conditions provide exceptions to this rule. The first of these conditions, which is set out in paragraph 131(8.1)(*a*), is met if, throughout the period that started on February 21, 1990 (or if later, the date of incorporation) and that ends at the particular time, all or substantially all of the corporation's property consisted of property other than Canadian real property, options therein and other taxable Canadian property.

Paragraph 131(8.1)(*a*) is replaced, with effect after October 1, 1996, with new wording that incorporates changes in the definition of "taxable Canadian property" and the relocation of that definition from paragraph 115(1)(*b*) of the Act to subsection 248(1) of the Act.

Clause 25

Non-Resident-Owned Investment Corporations

ITA
133

Section 133 of the Act provides rules for the taxation of non-resident-owned investment corporations on a basis that approximates the treatment that would apply if its non-resident shareholders had invested directly in Canada.

Computation of Income

ITA
133(1)(*c*)

Subsection 133(1) of the Act provides rules for computing the income and taxable income of a non-resident-owned investment corporation. Paragraph 133(1)(*c*) provides that the only taxable capital gains and allowable capital losses that are included in computing such a corporation's income are those from dispositions of taxable Canadian property.

Paragraph 133(1)(*c*) is amended, with application after October 1, 1996, to reflect the changes in the definition of "taxable Canadian property" and that definition's relocation from subsection 115(1) to subsection 248(1) of the Act.

Definitions

ITA
133(8)

"Canadian property"

Subsection 133(8) of the Act sets out certain definitions that apply for the purposes of section 133.

Paragraph (a) of the definition of "Canadian property" in subsection 133(8) is amended, with application after October 1, 1996, to reflect the changes in the definition of "taxable Canadian property" and that definition's relocation from subsection 115(1) to subsection 248(1) of the Act.

"capital gains dividend account"

Subsection 133(8) of the Act sets out certain definitions that apply for the purposes of section 133.

The description of M in paragraph (*c*) of the definition of "capital gains dividend account" in subsection 133(8) is amended, with application after October 1, 1996, to reflect the changes in the

definition of "taxable Canadian property" and that definition's relocation from subsection 115(1) to subsection 248(1) of the Act.

Clause 26

ITA
141(5)

Under proposed amendments contained in the 1999 Budget Bill, new subsection 141(5) of the Act would provide for shares issued by a life insurance corporation (or a holding corporation in respect of the life insurance corporation) to be considered, for the purposes of subparagraph 115(1)(*b*)(iv) of the Act, as listed on a stock exchange for up to six months after the demutualization of the life insurance corporation. As a consequence, such a share is treated as taxable Canadian property during that period. This treatment accommodates non-resident shareholders wishing to dispose of such shares without Canadian income tax consequences before the shares become listed on a prescribed stock exchange.

Because of the relocation of the definition "taxable Canadian property" from subsection 115(1) to subsection 248(1) of the Act, existing subparagraph 115(1)(*b*)(iv) is effectively being replaced by paragraph (*d*) of the definition "taxable Canadian property" in subsection 248(1).

This additional amendment to subsection 141(5) would simply change the reference to subparagraph 115(1)(*b*)(iv) to a reference to paragraph (*d*) of the definition "taxable Canadian property" in subsection 248(1). This amendment is intended to apply after December 15, 1998, in order to be consistent with the 1999 Budget Bill.

Clause 27

Reassessments

ITA
152(6)

A number of provisions of the Act allow a taxpayer to carry back amounts from one taxation year to reduce the taxpayer's income, taxable income or tax for a prior year. Where an amount is carried back under one of these provisions, subsection 152(6) of the Act directs the Minister of National Revenue to reassess the taxpayer's tax for the relevant year or years to take the carry-back into account.

Subsection 152(6) is amended to include in its list of carry-back provisions new section 119 and new subsections 126(2.21) and (2.22) and 128.1(7) of the Act. These additions apply to taxation years that end after October 1, 1996. As well, a taxpayer who wishes to use the newly-added provisions will be deemed to have filed the prescribed form required under subsection 152(6) in a timely manner if the form is filed on or before the later of the normal deadline for filing the form and the taxpayer's filing-due date for the taxation year that includes the day on which Royal Assent for these amendments is received.

Clause 28

Election on Emigration

ITA
159(4) and (4.1)

Subsections 159(4) and (4.1) of the Act allow an individual who has ceased to be resident in Canada to elect to pay any tax resulting from the deemed disposition of property under subsection 128.1(4) of the Act in up to six annual instalments, provided the individual gives the Minister of National Revenue adequate security.

The present amendments include, in new subsections 220(4.5) and 220(4.6) of the Act, more comprehensive and more liberal security rules than these. Subsections 159(4) and (4.1) are therefore repealed,

with application to individuals who cease to be resident in Canada after October 1, 1996.

Clause 29

Interest – Effect of Carryback of Loss, etc.

ITA
161(7)(*a*)

Section 161 of the Act provides for the payment of interest on outstanding amounts of tax payable under Part I of the Act, as well as on late or deficient instalments in respect of such tax.

Subsection 161(7) provides that, where the amount of tax payable for a taxation year is reduced because of certain deductions or exclusions arising from tax credits, the carryback of losses, or events in subsequent years, interest on any unpaid tax for the taxation year is calculated without regard to the reduction until the latest of several dates.

Paragraph 161(7)(*a*) is amended to include in its list of deductions and exclusions: a deduction under new section 119 of the Act in respect of the disposition of a taxable Canadian property of the taxpayer in a subsequent year; a deduction under new subsection 126(2.21) or (2.22) of the Act in respect of a disposition in a subsequent year; and a deduction under new paragraph 128.1(6)(*c*) or subsection 128.1(7) of the Act in respect of an election in a subsequent year.

These amendments apply to taxation years that end after October 1, 1996.

Clause 30

Effect of Carryback of Loss, etc.

ITA
164(5)

Section 164 of the Act relates to tax refunds. Subsection 164(5) provides that, where the tax payable for a taxation year is reduced because of listed deductions or exclusions that relate to subsequent years, interest payable to a taxpayer on any resulting overpayment of tax is to be calculated as if the overpayment had arisen on the latest of several dates.

These amendments add to the list of deductions and exclusions: a deduction under new section 119 of the Act in respect of a disposition of taxable Canadian property by a taxpayer in a subsequent taxation year; a deduction under new subsection 126(2.21) or (2.22) in respect of foreign taxes paid for a subsequent taxation year; and a deduction under paragraph 128.1(6)(*c*) or subsection 128.1(7) in respect of an election in a subsequent taxation year.

These amendments apply to taxation years that end after October 1, 1996.

Interest – Disputed Amounts

ITA
164(5.1)

Subsection 164(5) of the Act provides that, where the tax payable for a taxation year is reduced because of certain deductions or exclusions arising from tax credits, the carryback of losses, or events in subsequent years, interest payable to a taxpayer on any resulting overpayment of tax is to be calculated as if the overpayment had arisen on the latest of several dates. Subsection 164(5.1) of the Act, which deals with the calculation of interest on repayments of amounts in dispute, parallels the rules contained in subsection 164(5).

Subsection 164(5.1) is amended to simplify its structure and to accommodate the new deductions listed in the commentary on subsection 164(5), above.

This amendment applies to taxation years that end after October 1, 1996.

Clause 31

Individual Surtax

ITA
180.1

Section 180.1 of the Act imposes a surtax on individuals at a rate of 3% of the tax payable under Part I of the Act. An additional 5% surtax is imposed on that portion of an individual's Part I tax in excess of $12,500.

Former Resident – Credit for Tax Paid

ITA
180.1(1.4)

New subsection 40(3.7) of the Act provides a "stop-loss" rule that may apply to reduce the loss of an individual from the disposition of property at a particular time, where the individual was non-resident at any time before the particular time and received dividends in respect of the property while non-resident. New section 119 of the Act provides a special tax credit in certain cases where subsection 40(3.7) applies to an individual who ceased to be resident in Canada. If an individual's Part I tax for the year that includes the emigration is less than the amount deductible under section 119, new subsection 180.1(1.4) of the Act provides that the individual may deduct the balance from the tax otherwise payable under Part I.1 of the Act for that year.

New subsection 180.1(1.4) applies after October 1, 1996.

Meaning of Tax Payable under Part I

ITA
180.1(2)(*a*) and (*b*)

Subsection 180.1(2) of the Act provides rules for calculating Part I tax for the purposes of determining the base for tax under Part I.1 of the Act ("surtax"). Essentially, the tax base for surtax is the individual's tax payable for the year under Part I of the Act, calculated without reference to certain amounts.
Paragraphs 180.1(2)(*a*) and (*b*) are amended to add to the list of those amounts an amount deductible under new section 119 of the Act in respect of a former resident of Canada.

These amendments apply after October 1, 1996.

Clause 32

Branch Tax – Excluded Gains

ITA
219(1.1)

Under subsection 219(1) of the Act, a non-resident corporation's taxable income earned in Canada for a taxation year is one of the elements of the corporation's tax base in respect of the "branch tax" imposed under Part XIV of the Act. Subsection 219(1.1) restricts the definition of taxable Canadian property for the purposes of computing a non-resident corporation's branch tax base under subsection 219(1). For those purposes, subsection 219(1.1) directs that the existing definition of taxable Canadian property in paragraph 115(1)(*b*) of the Act is to be read without reference to subparagraphs 115(1)(*b*)(i) and (iii) to (xii). As a consequence of the relocation of the definition "taxable Canadian property" to subsection 248(1) of the Act, it is now necessary to amend subsection 219(1.1) to reflect the new definition of taxable Canadian property.

This amendment applies after October 1, 1996.

Clause 33

Security for Departure Tax

ITA
220(4.5) to (4.54)

Section 220 of the Act sets out a number of rules relating to the administration and enforcement of the Act.

New subsections 220(4.5) to (4.54) of the Act permit an individual to elect, on giving security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property (other than an employee benefit plan right) in paragraph 128.1(4)(*b*) of the Act. If such an election is made, interest does not start to accrue on the amount secured until such time as the amount becomes unsecured, as described below. In addition, relief is provided from a penalty under the Act to the extent that it is computed with reference to the unpaid tax with respect to the amount secured.

ITA
220(4.5)

New subsection 220(4.5) of the Act allows an individual to elect, in prescribed manner, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(*b*) of the Act. It is intended that this deferral also operate in respect of the corresponding provincial taxes for which the Government of Canada has assessment and collection responsibilities, with the settlement of accounts between the governments taking place as the tax is collected. To understand how the subsection works, several points should be noted.

- The security rule is in a mechanical sense applied annually. That is, the Minister of National Revenue's obligation to accept security applies for one year at a time. This does not mean that the emigrant must file a renewed election each year, but only that the Minister will determine on an annual basis whether, and in what amount, the security may remain in place.

- While the election to provide security must ordinarily be made – and the security itself must be provided – on or before the individual's balance-due day for the year of emigration, special accommodation is provided for those who cease to be resident before these amendments receive Royal Assent. Those individuals have until their filing-due date for the taxation year that includes Royal Assent to make the election and provide the security.

- The provision requires the Minister of National Revenue to accept "adequate security." The adequacy of any particular proposal for security is a matter of fact. It is understood, however, that in respect of tax on a gain from the deemed disposition of shares of a corporation, the Minister will not exclude the possibility of accepting some or all of the shares as security.

Where an individual has elected under subsection 220(4.5) and has provided adequate security, the Minister of National Revenue must, for a particular taxation year that begins after the individual ceases to be a resident of Canada, accept adequate security for the lesser of two amounts. The amounts are, in effect:

(i) the individual's taxes under Parts I and I.1 of the Act for the emigration year, to the extent those taxes are attributable to the deemed disposition under paragraph 128.1(4)(*b*) of the Act of properties that have not been disposed of before the particular year; and

(ii) if the particular year does not immediately follow the emigration year, the amount for which security was accepted for the preceding taxation year.

Where an individual who emigrated from Canada actually disposes, in a given year, of a property that was the subject of a deemed disposition on emigration, the Minister's obligation to accept security for the tax attributable to the deemed disposition of that property lasts only until the individual's balance-due day for the given year. The amount for which the Minister must accept security, in respect of a given departure from Canada, may thus decrease from year to year as the former emigrant disposes of properties. The amount cannot, however, increase.

An amount of tax may also become unsecured if the security furnished by the taxpayer for the tax has ceased to be adequate. For additional information in respect of inadequate security, see the commentary on subsection 220(4.53).

The effects of the acceptance of security by the Minister under subsection 220(4.5) are, first, that the Minister will not take any action to collect the tax so secured, and second, that for the purpose of computing interest and penalties owing by the taxpayer, the amount secured will be treated as an amount paid on account of the tax liability.

New subsection 220(4.5) generally applies to dispositions that occur after October 1, 1996. However, as noted above, elections made and security furnished under this subsection will be considered timely if effected before the taxpayer's filing-due date for the taxation year that includes the particular day on which these amendments receive Royal Assent.

Deemed Security

ITA
220(4.51)

New subsection 220(4.5) of the Act permits an individual to elect, on giving adequate security to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(*b*) of the Act. New subsection 220(4.51) treats an individual (other than a trust) as having furnished acceptable security to the Minister for the lesser of two amounts. The first amount is the total amount of taxes under Parts I and I.1 of the Act that would be payable, at the highest tax rate that applies to individuals, on a taxable capital gain of $75,000. (For administrative simplicity, this amount is described in the provision as the amount of those taxes that an *inter vivos* trust would pay for a year if the trust's taxable income for the year were $75,000.)

The second amount is the greatest amount of tax for which the Minister is required to accept security under subsection 220(4.5) for any particular taxation year of the individual. The deemed security is treated as having been furnished by the individual before the

individual's balance-due day for the year in which the individual ceased to be a resident of Canada.

The effect of this provision is to excuse individual emigrants (other than trusts) from the requirement to provide security for an amount at least equal to the taxes payable on their first $100,000 of capital gains ($75,000 of taxable capital gains) resulting from the deemed disposition on emigration.

New subsection 220(4.51) applies after October 1, 1996.

Limit

ITA
220(4.52)

New subsections 220(4.5) and (4.51) of the Act set out rules respecting the posting of security for tax that is owing as a result of a deemed disposition of property under paragraph 128.1(4)(*b*) of the Act. New subsection 220(4.52) of the Act limits the amount of tax that may be so secured to the total tax payable under Parts I and I.1 of the Act in respect of the application of paragraph 128.1(4)(*b*) in the taxation year that the individual ceased to be a resident of Canada (calculated without reference to any of the deductions or exclusions listed in paragraph 161(7)(*a*) of the Act).

New subsection 220(4.52) applies after October 1, 1996.

Inadequate Security

ITA
220(4.53)

New subsection 220(4.5) of the Act permits an individual to elect, on giving security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(*b*) of the Act. If such an election is made, interest and penalties do not accrue on the particular amount secured until such time as the amount becomes unsecured.

If the Minister determines, at any time, that the security accepted under subsection 220(4.5) is not adequate to secure the particular amount for which it was furnished by the individual, new subsection 220(4.53) of the Act provides that the security secures the part of the particular amount for which it is adequate security at that particular time; the balance of the particular amount is unsecured. The Minister is required to notify the individual in writing if part of the particular amount becomes unsecured in this manner, and the individual has the opportunity to furnish further security to the Minister within 90 days of being so notified. Where additional security is so furnished, the Minister is deemed to have accepted it in accordance with subsection 220(4.5).

New subsection 220(4.53) applies after October 1, 1996.

Extension of Time

ITA
220(4.54)

New subsection 220(4.5) of the Act permits an individual to elect, on giving security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that is owing as a result of the deemed disposition of a particular property in paragraph 128.1(4)(*b*) of the Act. This election must be made, and the security furnished, on or before the balance-due date for the taxation year that the individual ceased to be a resident of Canada. New subsection 220(4.53) of the Act permits an individual to furnish additional security to the Minister, where the Minister has notified the individual that security previously furnished is no longer adequate. The additional security must be so furnished within 90 days of the Minister's notification.

New subsection 220(4.54) of the Act permits the Minister to extend the time available to an individual to make an election or to furnish security under subsection 220(4.5), or to furnish additional security under subsection 220(4.53), where the Minister considers it just and equitable to do so.

New subsection 220(4.54) applies after October 1, 1996.

Security for Trusts Distributing Taxable Canadian Property to Non-resident Beneficiaries

ITA
220(4.6) to (4.63)

New subsections 220(4.6) to (4.63) of the Act permit a trust to elect, on the giving of security acceptable to the Minister of National Revenue, to defer payment of an amount of tax that it owes as a result of the distribution of a taxable Canadian property to a non-resident beneficiary. If such an election is made, interest does not start to accrue on the amount secured until such time as the amount becomes unsecured. In addition, relief is provided from a penalty under the Act to the extent that it is computed with reference to the unpaid tax with respect to the amount secured. These subsections are structured in a similar manner to new subsections 220(4.5) to (4.53), and are intended to operate similarly with respect to both federal and provincial taxes.

Subsection 220(4.6) applies where such a distribution is made and, only because of subsection 107(5) of the Act, the rollover under paragraphs 107(2)(*a*) to (*c*) of the Act does not apply to the distribution. Provided that the trust makes an election on or before the trust's balance-due day for the distribution year (or at a later time permitted under subsection 220(4.63)) and furnishes security before that balance-due day (or at a later time permitted under subsection 220(4.63)), the Minister is required to accept security in respect of each taxation year after the distribution year of an amount up to the amount specified under paragraph 220(4.6)(*c*) in respect of that subsequent year. The amount is required to be accepted until the balance-due day for that subsequent year.

The amount specified under paragraph 220(4.6)(*c*) for a particular taxation year of a trust is equal to the lesser of the following two amounts:

- the portion of the trust's total tax payable under Parts I and I.1 of the Act (determined without reference to loss carrybacks and other amounts specified under paragraph 161(7)(*a*)) for the distribution year that would not have been payable if each such distribution of taxable Canadian property (other than taxable Canadian property

subsequently disposed of before the beginning of the particular year) had not occurred; and

- where the particular year does not immediately follow the distribution year, the amount so specified for the taxation year of the trust that immediately precedes the particular year.

The relief with regard to arrears interest and penalties is provided under new paragraph 220(4.6)(*d*). This provision provides that interest is generally payable as if the particular amount for which adequate security is accepted at any time under subsection 220(4.6) in a particular period ending on the balance-due day for a taxation year subsequent to the distribution year had actually been paid on account of the trust's taxes under Parts I and I.1 for the distribution year. The particular amount in respect of a period that ends on a trust's balance-due day for a subsequent taxation year cannot exceed the amount specified under paragraph 220(4.6)(*c*) for the year. In addition, the particular amount is constrained because of the limit under subsection 220(4.61). However, paragraph 220(4.6)(*d*) does not apply with respect to interest on unpaid tax instalments which is dealt with under new subsection 107(5.1) of the Act.

Subsection 220(4.61) limits the amount for which the Minister is considered to have accepted security under subsection 220(4.6), in order to take into account reductions as of any day, for the purpose of computing arrears interest, in the calculation of taxes under Parts I and I.1 arising from the carryback of losses and similar amounts. The effect of subsection 220(4.61) is to limit the amount of acceptable security as of any day in respect of a trust's tax payable for a distribution year to:

- the total taxes payable by the trust under those Parts for the distribution year, determined without reference to such reductions that occur after that day

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- the total taxes payable under those Parts, determined without reference to such reductions and as if the rollover rules in subsection 107(2) had applied to distributions in the

distribution year not covered by those rules only because of subsection 107(5).

Subsection 220(4.62) provides rules which apply where security furnished by a trust under subsection 220(4.6) ceases to be adequate. These rules are essentially the same as the rules in subsection 220(4.53). As noted above, subsection 220(4.63) allows for the late filing of elections and the late furnishing of security. Subsection 220(4.63) is essentially the same as subsection 220(4.54).

These amendments apply to distributions that occur after October 1, 1996. However, transitional measures treat elections made, and security furnished, up to the taxpayer's filing-due date for the year in which these amendments receive Royal Assent as having been made at such time as to maximize the benefits under subsection 220(4.6).

Undue Hardship

ITA
220(4.7) and (4.71)

In some circumstances, an individual who wishes to provide security under new subsection 220(4.5) or (4.6) of the Act may be unable to do so without undue hardship. In such a case, new subsection 220(4.7) of the Act authorizes the Minister of National Revenue to accept security different from, or of lesser value than, that which would otherwise be required. The Minister is under no obligation to exercise this discretion, and can in any event do so only if the individual can without undue hardship neither provide security, pay the tax owing, nor reasonably arrange to have the security provided or the tax paid on the individual's behalf.

New subsection 220(4.71) of the Act provides that in making a determination under subsection 220(4.7), the Minister will ignore any transaction by which a person or partnership limits their rights in respect of a property, if the transaction can reasonably be considered to have been entered into in order to influence the Minister's determination.

These new subsections apply to dispositions and trust distributions that occur after October 1, 1996.

Clause 34

Definitions

ITA
248(1)

Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

"taxable Canadian property"

One of the key concepts in the Act is the concept of "taxable Canadian property." The term is used for a variety of purposes, mostly but not exclusively to do with the taxation of non-residents and migrants. The scope and functions of the term are, however, less than fully clear, in part because the Act currently includes two definitions. The main definition, in subsection 115(1) of the Act, appears to apply for all purposes of the Act. A second definition, however, is provided in subsection 248(1) of the Act. This second definition both confirms the meaning assigned in subsection 115(1) and provides an extended meaning for certain limited purposes.

To clarify the meaning of "taxable Canadian property" and to simplify the Act, the definition in subsection 248(1) of the Act is made the only one, and the substance of the existing subsection 115(1) definition is incorporated into it. In addition, certain changes are made to the definition to reflect its policy basis and to harmonize its components.

Under this new single definition, taxable Canadian property of a taxpayer at any time in a taxation year includes property of the taxpayer that is:

(a) real property in Canada,

(b) property used or held by the taxpayer in carrying on a business in Canada (including eligible capital property), or inventory of such a business, other than

(i) property used in carrying on an insurance business, and

(ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and related personal property, if the country in which the taxpayer is resident does not tax the gains of persons resident in Canada from dispositions of such property,

(c) if the taxpayer is an insurer, its designated insurance property for the year,

(d) unlisted shares of Canadian-resident corporations (other than a non-resident-owned investment corporation, unless on the first day of the year the corporation owns taxable Canadian property, and other than a mutual fund corporation),

(e) unlisted shares of non-resident corporations if, at any time during the 60-month (currently 12-month) period that ends at that time, the value of the company's Canadian real and resource properties made up more than half the fair market value of all of its properties, and more than half of the fair market value of the share was derived directly or indirectly from such properties,

(f) listed shares that would be described in paragraph (d) or (e) if those paragraphs included listed shares, or shares of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer and non-arm's length persons owned 25% or more of the issued shares of any class of the capital stock of the corporation,

(g) certain partnership interests, if at any time in the 60-month (currently 12-month) period that ends at the time, most of the partnership's value is attributable to Canadian property,

(h) capital interests in trusts (other than unit trusts) that are resident in Canada,

(i) units of unit trusts (other than mutual fund trusts) that are resident in Canada,

(j) units of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the units of the trust belonged to the taxpayer and non-arm's length persons,

(k) interests in a non-resident trust if, at any particular time during the 60-month (currently 12-month) period that ends at that time, the trust met a test comparable to the one described in respect of a non-resident corporation in (e) above, and

(l) interests in, and options in respect of, property described in any of paragraphs (a) to (k), whether or not the property exists.

Two additional points should be noted with respect to this new definition. First, in addition to listing the above types of property, the new definition preserves in its paragraph (*m*) the extended meaning of "taxable Canadian property." That extended meaning now applies for the purposes of section 2, subsection 107(2.001), sections 128.1 and 150 of the Act, and for the purpose of applying paragraphs 85(1)(*i*) and 97(2)(*c*) of the Act to a disposition by a non-resident person. For these purposes, "taxable Canadian property" includes Canadian resource properties, timber resource properties, income interests in trusts resident in Canada, rights to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(*a*) of the Act, and life insurance policies in Canada. Second, the new definition does not include, as the existing one does, property that is not otherwise defined to be taxable Canadian property but that rather is deemed by another provision of the Act to be so. That distinction remains relevant, but the rewording of the definition "excluded property" in subsection 116(6) of the Act makes it unnecessary here.

The amended definition of "taxable Canadian property" generally applies after October 1, 1996. Before December 24, 1998, however, the portion of paragraph (*b*) of the definition before subparagraph (*b*)(i) is to be read as though it were confined to capital property used in carrying on a business in Canada.

Clause 35

Additions to Taxable Canadian Property

Income Tax Application Rules
26(30)

Section 26 of the *Income Tax Application Rules* sets out the method for computing the adjusted cost base to a taxpayer of certain capital property owned by the taxpayer at the end of 1971. The general purpose of section 26 is to prevent gains that accrued before 1972 from being subject to tax.

Subsection 26(30) of the Rules provides that dispositions by non-residents persons of certain types of property are not within the application of subsections 26(1.1) to (29) of the rules. Essentially, these are properties that became taxable Canadian properties because of changes to the definition "taxable Canadian property" that took effect in April, 1995. The relief provided by section 26 is not needed for such properties, as subsection 40(9) of the *Income Tax Act* ensures that a non-resident person's gains or losses on the disposition of such properties are limited to those that accrued after April 1995.

This amendment to subsection 26(30) of the rules ensures that the provision does not apply to property that becomes taxable Canadian property as a result of these proposals. The amendment applies to dispositions that occur after October 1, 1996.

APPENDIX

TAXPAYER MIGRATION

DRAFT *INCOME TAX REGULATIONS*

AND EXPLANATORY NOTES

1. (1) Subsections 600(*c*) of the *Income Tax Regulations* is replaced by the following:

(*c*) paragraphs 48(1)(*a*) and (*c*), 66.7(7)(*c*), (*d*) and (*e*) and (8)(*c*), (*d*) and (*e*), 80.01(4)(*c*) and 128.1(4)(*d*), (6)(*a*) and (*c*) and (7)(*c*) of the Act;

(2) Subsection (1) applies after October 1, 1996.

2. (1) The portion of section 2606 of the Income Tax Regulations before subsection (3) is replaced by the following:

Limitations of business income

(1) If, in the case of an individual to whom section 2601, applies, the total of the amounts otherwise determined as the individual's income for a taxation year from carrying on business earned in all provinces and countries other than Canada is greater that the individual's income for the year, the individual's income for the year from carrying on business earned in a particular province or country is deemed to be that proportion of the individual's income for the year that

(a) the individual's income for the year from carrying on business in the province or country as otherwise determined,

is of

(*b*) that total.

(2) If section 114 of the Act applies in respect of an individual for a taxation year, the reference in subsection (1) to "the individual's income for a taxation year" shall be read as a reference to the amount of the individual's taxable income for the year and, for the purpose of

this Part, the individual's income for the year from carrying on a business in any place shall be computed by reference only to a business the income from which is included in computing the individual's taxable income for the year.

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

TAXPAYER MIGRATION

EXPLANATORY NOTES

ITR
600(*c*)

Subsection 220(3.2) of the Act allows the Minister of National Revenue to extend the time for the filing of, or allow the amendment or revocation of, certain elections under the Act and Regulations. The list of those elections, in Part VI of the Regulations, is amended to include the elections contemplated by new paragraphs 128.1(6)(*a*) and (*c*) and (7)(*c*) of the Act. This amendment applies after October 1, 1996.

ITR
2606

Part XXVI of the Income Tax Regulations sets out rules for computing an individual's income earned in a taxation year in a particular province.

Subsection 2606(1) of the Regulations provides for an adjustment to an individual's income earned in a particular province where the sum of the individual's incomes earned in each province and in countries other than Canada exceeds the individual's income for the year. Subsection 2606(2) of the Regulations provides a further adjustment for the purposes of subsection (1) where the individual is non-resident for part of a taxation year only.

Subsection 2606(2) of the Regulations is amended, with application to the 1998 and subsequent taxation years, to reflect amendments to section 114 of the Act (see the commentary on section 114 for further details). In addition, subsections 2606(1) and (2) are amended to update their language.